UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.157/PC/66/Add.1
16 April 1993

ENGLISH
Original: ENGLISH/FRENCH

WORLD CONFERENCE ON HUMAN RIGHTS
Preparatory Committee
Fourth session
Geneva, 19-30 April 1993
Item 6 of the provisional agenda

REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Addendum

Contribution by the Council of Europe

This addendum contains the six communications introducing the subthemes of the interregional meeting organized by the Council of Europe at Strasbourg from 28 to 30 January 1993 with a view to the World Conference on Human Rights. The report on the meeting, entitled "Human Rights at the Dawn of the 21st Century", has been circulated as document A/CONF.157/PC/66.

GE.93-12704 (E)

Council of Europe
Conseil de l'Europe

Strasbourg, 25 March 1993

"Human Rights at the Dawn of the 21st Century"

ADDENDUM

to the

REPORT
from the
Interregional meeting organised by the Council of Europe
in advance of the World Conference on Human Rights

Palais de l'Europe, Strasbourg, 28-30 January, 1993

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DOMESTIC INSTITUTIONS AND ACTION AS THE PRIMARY MEANS TO IMPLEMENT HUMAN RIGHTS

Tanja Petovar*

Institutional Basis for the Implementation of Human Rights

The state undertakes to ensure certain human rights to all individuals in its jurisdiction and to do so without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Regardless of whether it is a party to all or some human rights treaties, each state will take the necessary steps to adopt such measures as may be necessary to give effect to rights recognised by the world community.

Each state thus undertakes:

-- to ensure that any person whose rights or freedoms are violated shall have an effective domestic remedy for such violation, even if the violation has been committed by persons acting in an official capacity;

-- to ensure that any person claiming such remedy shall have his rights determined by competent judicial, administrative or legislative authority, or by any other competent authority provided by the legal system of the state, and to develop the possibilities of judicial remedy;

-- to ensure that the competent authorities shall enforce such remedies when granted.

This being so, what is now legally and politically to be done?

Of course, the state must be the prime mover, but how is the international community to ensure that individual governments take measures to fulfil their obligations in this regard? What, indeed, can the individual do to induce the state of which he or she is a citizen to take whatever steps are needed?

The underlying presumption of the human rights system is that each state enjoys means for "giving effect" to it and that its infrastructure is based on strongly entrenched moral precepts.

The institutions presumed to exist include:

(a) an impartial and independent judiciary;

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(b) a legislature formed on the basis of political pluralism;

(c) an administration able to execute the decisions of the other two branches.

The separation of these three branches is of primary importance in ensuring positive action on human rights; and in creating a balance between state and citizen, there must be an authority independent of both state and citizen: an ombudsman.

(a) An independent and impartial judiciary

A judiciary is there to implement the constitution and the law. The law must be clear and accepted as just in the light of prevailing circumstances. But, however just the law, its implementation depends on the judge. Properly functioning courts can only exist in states which are themselves governed by the rule of law, and which enjoy the confidence of their citizens.

There is a vast gulf in the implementation of law between countries with a legal tradition and those with little or none. But a lack of tradition is not so subversive to the rule of law as is the new ideology of ethnocentricity, a state with discrimination at its core. The earlier discriminatory principles of castes, of tribal and "class struggle" have in some states been superseded by a new form of discrimination, an ethnic totalitarianism which is incompatible with pluralism, with democracy and with human rights.

Fair trial, *habeas corpus*, *actio popularis*, are needed.

But even due process, with prosecutor, defendant, defence counsel, experts, witnesses and finally judges can hardly be fair if the participants see ideological values as being above natural principles, such as the principle of equality for all regardless of ethnic origin. *Habeas corpus* in such an intolerant state might become a base for unjustified detention; *actio popularis* might even be seen as a collective conspiracy if used by an ethnically coherent group of citizens.

(b) A legislature that provides for political pluralism

One of the principal characteristics of a legislative body intended to guarantee the protection of rights is a guarantee that these rights apply ideally to all those within its jurisdiction. Political rights, including the rights to vote, to be elected and freely to organise political parties are basic to any functioning democracy. On the other hand, as we well know, the price of all this is, and always has been, eternal vigilance.

(c) A public administration charged with executing the decisions of the other two governmental branches

On the level of public administration, popular input must be solicited, considered and, where appropriate, acted upon. Administrative tribunals should operate as much as possible in the public eye; in virtually all instances their decisions should be subject to judicial review.

By such means, civil servants should not be enabled to become powerful manipulators as in the past.

Regional and local bodies are more appropriate instruments than centralised governments to involve citizens in the democratic process. A real knowledge of local needs make them more competent at creating policy to improve local economic, social, civil and political rights. In times of transition from a state to a market economy, these bodies can have an important influence on the centre in its attempts at creating fiscal policy that favours the rights to education, to welfare, indeed, to quality of life.

Actions by non-governmental institutions

There are other institutions with important roles to play: a free media, free schools, trade union and non-governmental organisations for promoting human rights.

Free media are the fresh air of democracy as censorship is to the dictator. A free press is always needed if one hopes to construct and to consolidate the process of democracy.

In most of the former totalitarian states it is the government that controls radio, television and considerable sections of the press. Even in a free society, only a small proportion of the press influences public opinion by providing information. By far the greater proportion simply panders to prejudice. Where press and media are the servants of an undemocratic government, on the other hand, they generally fulfil only the latter function. The crux of the matter is that it is very difficult indeed to legislate for decency. It helps to be an optimist.

An educational system based on the principle of academic freedom helps to keep our hopes for human rights alive. As we have pointed out, one of our answers lies in education and perhaps it would be useful in this context to include courses in human rights in teachers' training courses. It might be desirable in some instances to appoint an ombudsman where a relevant body of citizens feels that education in human rights is being neglected.

Trade unions and other workers' associations wherein coherent policy is developed to the benefit of their members should help to improve civil liberties. So, of course, civil liberties must not only be taught: they must be promulgated, they must be carried through.

The importance of national NGOs to both the promotion and protection of human rights is well understood but is not yet significant. It can become so as they learn to make use of the media. And if the media in any given state is a government monopoly, the NGOs must find means of circumventing it. Whatever the situation, governments would generally be well advised to listen.

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The existence of all these institutions is necessary, but they alone are not enough to ensure that democracy will work. It is interaction between institutions that does this. Their permanence and their interaction are preconditions for gaining the trust of the citizenry: they are preconditions for gaining the capacity to respond quickly to individuals seeking to vindicate their rights.

The institutions must be such that the individual feels not only that his work in the interest of justice is valued and that his rights are respected. By creating such institutions, the state serves its own interests, for in doing so it generates the trust without which the danger of civil unrest is never absent. The individual should feel that fulfilling his duty to the community gains him a *quid pro quo* and is not merely a one-sided act. In a word, the challenge is to stimulate people to take on active and competent roles in their communities and to recognise their interests in so doing.

Such generalisations have a pleasant ring to them. They are easy to make. We repeat them like mantras day after day. But when one calls to mind the hard and bloody fate of the Kurds in Iraq and Eastern Turkey, the Bosnians in their burned towns and villages, the Burmese in their too-many prisons, the street children in Brazilian cities, the generalisations are no longer pleasant. They make us want to weep.

* * *

THE ROLE AND FUNCTIONING OF INTERNATIONAL MACHINERY

Rodolfo Mattarollo*

I. Critical analysis of international machinery

Analysis of international machinery for the protection of human rights is of considerable importance. Through such machinery international human rights legislation affords protection with differing degrees of effectiveness and endeavours to narrow the huge gap that often exists between precepts and practice. The achievements and shortcomings in international protection are a key question for the World Conference. If the international community does not seize this opportunity to establish more effective instruments, the scepticism with which the public often regards the complex and sometimes arcane machinery of the system will deepen.

Certainly there cannot be improvements in procedures without reforms of the bodies responsible for applying them. Nevertheless, for methodological reasons, the emphasis here is on the machinery, although in some cases reference will be made to the organs empowered to apply that machinery.

To overcome the inadequacies of the system, taking a pragmatic approach, one could propose making improvements to the existing system or setting up new organs and procedures. A combination of the two is also possible.

(a) Grave and systematic violations

The international system of human rights protection has proved largely incapable of reacting speedily and effectively to *acute situations* such as grave and systematic violations of fundamental human rights (torture, "disappearances", summary executions and arbitrary arrests on a large scale).

These situations demand *urgent, concrete responses* in the form of action rather than mere declarations. At the present time, there is some machinery capable of approaching this kind of response in individual cases - such as the "prompt intervention" measures in the thematic procedures of the United Nations Commission on Human Rights. However, such action is not an adequate response in the face of violations on a massive scale.

An illustration of the fact that an *urgent response* to such situations is possible was provided by the special session of the Commission on Human Rights on former Yugoslavia

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last August, although that initiative seems to have been of a quite exceptional kind. Nevertheless, the Commission on Human Rights will be asked at its next session to consider a proposal to establish a permanent *emergency mechanism* "in order to be in a position to react, without delay and in an appropriate manner, to an acute situation arising from a gross violation of human rights".[1]

The procedures needed to deal with *acute situations* are not exactly the same as those for examining individual cases, neither from the point of view of the political challenges they pose nor of the methods required.

Among the initiatives suggested to deal with this kind of problem is the familiar idea of setting up a *United Nations High Commissioner for Human Rights*, which has now been updated in an international context such that it may perhaps be regarded as more realistic than in the past.

Often acute human rights situations are inseparable from either national or international armed conflict, the domain of international humanitarian law, which is a specific system of law, although large areas overlap with international human rights law.

In other cases, acute situations are associated with internal violence, disturbances, tension and national emergencies. As humanitarian law is not applied in such situations and a state of emergency can suspend the exercise of some human rights, it is important that this World Conference should give its support to the Declaration of Minimum Humanitarian Standards which are applicable in all situations and may not be suspended under any circumstances.[2]

The creation of an office of United Nations High Commissioner for Human Rights could, in certain kinds of acute situations, facilitate coordination between the universal human rights protection system and the various humanitarian organisations (such as the UNHCR and the ICRC).

There are certainly a variety of possible responses to acute situations.

Some of the most recent *United Nations peace-keeping missions* have included a human rights component. Experience to date has demonstrated the need for such missions to have a clear mandate and to be able to rely on the co-operation of all the parties involved, the means and resources necessary and the firm support of the international community. A

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[1]*See* Annex to Commission on Human Rights resolution 1992/55 on the Establishment of an emergency mechanism of the Commission on Human Rights.

[2]UN document E/CN.4/Sub.2/1991/55, Declaration of Minimum Humanitarian Standards adopted by an expert meeting convened by the Institute for Human Rights, Abo Akademi University, Turku/Abo, Finland (30 November to 2 December 1990).

mission of this kind, as recent experience has shown, has (among other things) a major preventive effect.[3]

One problem that has to be solved in such operations is the discrepancy that can appear between the diplomatic methods which characterise the good offices exercised by the Secretary-General and the discreet, although not necessarily confidential, approach of human rights monitoring.

It would be desirable for the World Conference to *place on record its full support* for this encouraging experience on the part of the international community in the search for new machinery for the promotion and protection of human rights.

In addition, the Conference could give a fresh and decisive impetus to the studies carried out by the United Nations International Law Commission on the *setting up of an international criminal court*. Such a court could be competent to examine those cases in which grave and systematic human rights violations constitute international crimes.

Indeed, in its recent work the International Law Commission has described mass, systematic violations of fundamental human rights as international crimes, in the draft Code of Crimes against the Peace and Security of Mankind.[4]

The setting up of an international criminal court would be a veritable challenge in a world where international courts have rarely enjoyed unanimous confidence.

This is in fact an issue that could prompt reservations, and not only from human rights offenders. Such reservations could derive from the fact that differing views of human rights appear regrettably to persist in new forms in the world today.

Discussion is perhaps inevitable on the matter of *humanitarian intervention*. In connection with this controversial theme, at one of the preparatory activities of the World Conference - the European Conference on International Human Rights Standards - it was remarked that: "the use of force could only be permitted when in conformity with Chapter VII of the Charter or in the most exceptional of circumstances. If the Security Council was unable to react, then a regional solution might be acceptable. In all cases, diplomatic and economic measures were to be preferred."[5]

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[3] To date the most developed example of human rights monitoring in this kind of mission has probably been the ONUSAL (United Nations Observer Mission in El Salvador). Its mandate was defined by the Government of El Salvador and the FMLN (Frente Farabundo Martí para la Liberación Nacional) on 26 July 1990. The legal implications of this instrument were interpreted by the ONUSAL in its first report (UN document A/45/1055, S/23037).

[4] International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind, article 21 provisionally adopted in 1991.

[5] UN document A/CONF.157/PC/42, para. 85, European Conference on International Human Rights Standards (Barcelona, Spain, 13-17 January 1992).

(b) Supervisory machinery: general questions

One of the central aims of the World Conference is to *"examine ways and means to improve the implementation of existing human rights standards and instruments"* (United Nations General Assembly resolution 45/155, paragraph 1, sub-paragraph c).

According to a report of the United Nations Secretary-General[6], one aspect of this would aim at "streamlining implementation procedures (...) and at introducing methods for following up the findings and recommendations of the various implementation-monitoring bodies".

Bearing in mind that there are nine United Nations human rights agreements that contain reporting obligations, it seems clear that it is necessary to *simplify rather than add to the obligations to present reports*.

To this end, it has been proposed that the World Conference examine the possibility of each State drawing up a *single overall report* covering all the conventions and agreements (international and/or regional) to which it is a party. Each organ set up under a treaty would examine that part of the report coming within its purview.

If these reports are to be a genuine self-examination, *NGOs should play a major part* in preparing the national reports.

Follow-up of the recommendations made to the States is essential and for this purpose adequate machinery needs to be set up. Accordingly, the Human Rights Committee has decided to appoint a special rapporteur to follow-up the observations.[7]

(c) Preventive functions

The aim of international machinery is to protect human beings, and for this reason its *preventive function* is vital. However, for a long time a reactive approach predominated and solutions lagged far behind the factual situations.

The purpose of prevention - exercised through urgent appeals and precautionary measures - is to avoid the violation of a right. In a broader sense, precautionary measures can also consist in rapidly restoring to a person the enjoyment of a right or freedom that has been infringed, to prevent irreparable harm being done. This requires *simple, rapid machinery* inspired by humanitarian rather than accusatory goals. Examples include the *urgent appeals* of the Commission on Human Rights, the *interim measures* dealt with in the Rules of Procedure of the Human Rights Committee (Rule 86), and above all the *precautionary*

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[6]Report on Studies and Documentation for the World Conference, Annotations to the Studies, UN document A/CONF.157/PC/20, 26 March 1992, para. 9.

[7]These initiatives were set forth at the informal meeting convened by the Nordic Human Rights Institutes in Iceland on 9 and 10 June 1991. That meeting approved a report on "Standards, compliance and technical co-operation, substantive issues before the 1993 World Conference on Human Rights"; *see* UN document A/CONF.157/PC/7.

measures provided for in the Rules of Procedure of the Inter-American Commission on Human Rights (IACHR) (Article 29).

The IACHR's ability to adopt such measures even when it is not in session makes this machinery particularly rapid. In practice the IACHR has responded to non-written denunciations in urgent cases, and on some occasions has taken preliminary measures within hours of hearing of a grave and imminent violation.

Preventive machinery can also be established under conventions, such as the *system of visits* to all places of detention which is provided for under the European Convention for the Prevention of Torture. At a universal level, similar machinery is envisaged in the Draft Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The draft protocol was proposed by the Costa Rican government and is being examined by an open working party of the Commission on Human Rights.

The Human Rights Division of ONUSAL was probably the first United Nations human rights protection body legally empowered to carry out these kinds of visits on a regular basis, in any place or establishment, *without giving prior notice*. Its experience in this respect has been truly positive.

From the point of view of the victims, it is absolutely essential to reinforce the preventive effect of international machinery.

The World Conference could stress the importance of adopting a universal instrument such as the *Draft Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and point out the need to upgrade specific preventive machinery.

It would be advisable to emphasise the practical importance of the norms contained in certain General Assembly resolutions, which constitute important reference points for the interpretation of international treaties.

This is true of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which lay down, inter alia, specific standards for the *protection of individuals and groups subjected to the threat of execution.*[8] These principles have proved extremely useful for the protection organs that have had to carry out preventive action in the field.

Moreover, with a view to adopting new machinery, measures such as the so-called *international habeas corpus* proposed some time ago should be examined in the near future. Such initiatives mean finding solutions to complex legal/political problems, including that of international jurisdiction, mentioned earlier in connection with the work of the International Law Commission.

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[8] ECOSOC resolution 1989/65 of 24 May 1989, endorsed in General Assembly resolution 44/162 of 15 December 1989: Principle 4.

(d) Investigation of human rights violations

There is a growing consensus today that, with international law as it stands, when faced with grave violations of fundamental human rights, *a priori* immunity from prosecution is unacceptable. In other words, there is a legal obligation to investigate and try such conduct in all cases. Opinions are divided as to whether, once a verdict of guilty has been passed, a pardon can be granted.

These are areas in which there is usually a wide gap between principles and practice and which concern both human rights and the prevention of crime.

This problem is none other than that of *impunity*, a question on which the Subcommission on Prevention of Discrimination and Protection of Minorities has appointed two rapporteurs and which *should be included on the agenda of the World Conference*.

Impunity affects the preventive effectiveness of criminal law and undermines the right of families to know the fate of their relatives, enshrined in international humanitarian law (Additional Protocol I, 1977, article 32).

From the standpoint of international machinery an important procedural instrument against impunity is *universal jurisdiction* to try persons suspected of acts such as torture, summary executions or enforced or involuntary disappearances.[9]

One way in which international machinery operates in the field of human rights and the administration of justice is *as a model for the improvement of domestic law and judicial practice* in States. This is especially clear with regard to the investigation of human rights violations that constitute criminal offences.

From a practical point of view, a vital aspect of the fight against impunity is *proper investigation of the facts, with full respect for judicial guarantees*. Accordingly, the World Conference could give even greater emphasis to certain instruments of great importance for in-the-field work, such as the aforementioned Principles on summary executions.

To this end, it would be useful to ensure *close co-operation* between the recently formed United Nations Commission on Crime Prevention and Criminal Justice and the Commission on Human Rights.

By the same token, any strategy for human rights protection and promotion, including the fight against impunity, demands that the *status and role of non-governmental organisations should be strengthened*, at both national and international level.

As proposed at the World Congress on Human Rights in New Delhi (December 1990), the World Conference could recommend that the United Nations give serious consideration

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[9] It is regrettable that the principle of universal jurisdiction was deleted from the text of the Declaration on the Protection of all Persons from Enforced or Involuntary Disappearances, approved by the Commission on Human Rights at its 48th session.

to the possibility of setting up a Human Rights Council, at the same level as the other principal organs of the United Nations, on which NGOs, the United Nations' specialised bodies, etc. would be represented, and which would be charged with ensuring respect for human rights throughout the world.[10]

Similarly, the World Conference should *reinforce the protection of NGOs and all those working with human rights protection bodies against intimidation and reprisals.*

As far as human rights courts are concerned, it is necessary to strengthen the courts which already exist in Europe and America. The initiative already under way to examine the possibility of setting up *effective regional machinery to protect and promote human rights in the Asia and Pacific region* should also be pursued.

It is said that the Inter-American Court of Human Rights is underused, which seems obvious judging from the small number of cases referred to date by the Inter-American Commission on Human Rights for trial by the Court in San José, Costa Rica.

Given the quality of judgments delivered to date, it seems clear that one way of revitalising the inter-American system of human rights protection would be through *more frequent use of the Court.*

Where the European system is concerned, it would be worth mentioning the adoption of *Protocol No. 9* to the European Convention, which allows individuals to refer to the European Court a case declared admissible by the European Commission. It would also be useful to indicate the extent of the reform of the control machinery provided under the Treaty of Rome.

With regard to non-convention machinery, the procedure established by ECOSOC Resolution 1503 should be examined, as it has been the target of considered criticism from the human rights community. One way of making the procedure more effective is to *restrict confidentiality.* The "sanctions" that may be imposed through this procedure are essentially political; the main one is publicity, the severity of which could depend on the extent of co-operation and progress made in the human rights field by the State in question.

Publicity should be used much more widely in those areas in which it has been decided to adopt this approach, such as the lists that are drawn up of banks, transnational firms and other bodies which support the apartheid policies of the government of South Africa, or in relation to States that have declared a state of emergency and suspended certain rights.

Although it is a broad question extending beyond the scope of this meeting, it seems worth mentioning the question of *the right to reparation, restitution and compensation*, which is of fundamental importance if the political and ethical responsibility of States for the protection and observance of human rights is to be given concrete, legal substance.

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[10] UN Document A/CONF.157/PC/42, para. 91.

In this sense, and within the general objective of the protection of victims, the World Conference could consolidate the right to reparation, restitution and compensation for victims of human rights violations.

2. The need for universal accession to treaties

To strengthen international protection machinery, it is first necessary for *States to ratify or accede to international treaties*. To this end, such methods of persuasion have been suggested as "giving more regular publicity to the list of non-ratifying States and regular requests by the General Assembly, the Economic and Social Council and/or the Commission on Human Rights so that the States in question could offer explanations for their reluctant partnership".[11]

The Conference could advocate greater recourse to advisory machinery to help States overcome the difficulties of ratification or signature with as few reservations as possible, whether of substantive instruments or of optional machinery.

The Conference should however also appeal for stronger political determination on the part of States, which is after all the decisive factor in the ratification of, or accession to, these instruments.

3. The direct applicability of conventional rules

If the rules laid down in international human rights treaties are to be invoked in national courts, it is important for the States to regard these rules as self-executing in the domestic system.

The Human Rights Committee has adopted the practice of questioning States Parties about the force of the International Covenant in domestic law. Many American states have replied that the Covenant has been incorporated into the domestic system and can be invoked directly before judicial or administrative authorities.

It is important in this connection to examine also the problem of the place occupied by treaties and their normative hierarchy - in particular, human rights and humanitarian law treaties - in the domestic legal system, with regard to the Constitution and legislation.

The International Court of Justice, the European Court of Human Rights and the Inter-American Court of Human Rights have all demonstrated the specific characteristics of human rights treaties compared with other international treaties.

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[11]Informal meeting convened by the Nordic Human Rights Institutes, Iceland; UN document A/CONF.157/PC/7 para. 10.

The United Nations Centre for Human Rights and other specialised bodies could advise States and help them resolve any technical problems that may arise.

4. Domestic implications of international procedures and decisions

The binding nature of the decisions of the European Court and the Inter-American Court when exercising their judicial functions clearly derives from the standards laid down in the respective regional conventions (European Convention, Articles 52 to 54; American Convention, Articles 67 and 68).

The American Convention is particularly detailed in that it defines the operative aspect of the sentence (Article 63 (1)) and lays down the form of its execution (Article 68 (2)).

It has been argued that the self-executing character of the judgment derives from the very act of ratifying the Convention without the need for any subsequent action by the States Parties.

Similarly, decisions of the Human Rights Committee are regarded as binding. The fact is that even though the Committee is not a court, it is an independent and impartial body that establishes facts and applies the law. The procedure used is adversarial, although strict rules on the admissibility and value of evidence have not been codified.

The Committee's interim measures, as well as its decisions in accordance with the Optional Protocol, including those relating to the compensation of victims, must be regarded as binding by governments.

The same can be said of other quasi-judicial bodies created by international or regional human rights treaties, which are independent and impartial and which, within the structure of international machinery, apply the adversarial principle and strict rules as to admissibility and weight of evidence.

The World Conference could *reinforce the binding nature of the decisions of judicial and quasi-judicial human rights protection organs* and call upon governments to comply with these decisions in every respect, including the right of victims to reparation, restitution or compensation.

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THE PROMOTION OF HUMAN RIGHTS AND PREVENTION OF HUMAN RIGHTS VIOLATIONS

Ian Martin*

The World Conference on Human Rights has not yet become the focus of public expectations, in Europe or elsewhere. But it will, and when it does it will be in a context of deep public concern about massive human rights violations which all the commitments to human rights in the charters of international organizations, in the policies of governments and in the work of non-governmental organizations have failed to prevent.

The central fact before the second World Conference on Human Rights must therefore be that - forty-four years after the adoption of the Universal Declaration on Human Rights (UDHR), and nearly twenty-five years after the first United Nations (UN) World Conference on Human Rights in Tehran - the guarantees of the Declaration remain unknown and unrealized for hundreds of millions of the "members of the human family." In the 1990s, violations of the most fundamental of all rights, the right to life, remain widespread. At the beginning of 1993, the currency of the term "ethnic cleansing" and concern at the reassertion of racism in different parts of Europe are powerful reminders that the nature and motivation of the crimes of the Nazi era are alive today. Few countries have eliminated serious incidents of ill-treatment of citizens by their police and security forces, and in many countries torture is not just occasional but systemic - among them, states which have for some years been party to the UN, and to the European, Conventions against torture.

The acceptance by governments that they have a human rights responsibility to guarantee economic, social and cultural rights - equal to and indivisible from their responsibility to respect civil and political rights - has been in decline, despite lip service sometimes paid to the interdependence of the two sets of rights elaborated in the Covenants and in regional treaties. Western governments have made increasingly forthright commitments to the international promotion of human rights through their foreign policies, including their development aid policies. But in practice actions they have taken on human rights grounds, or have refrained from taking, have often been politically selective rather than principled and consistent. Regional blocs as well as those who dominate the UN Security Council bear responsibility for the selectivity of international action and inaction.

Inter-governmental mechanisms for the implementation of human rights commitments are usually slow and often ineffective, rarely able to respond in a manner commensurate with human rights crises, or even over many years to have an impact on chronic patterns of torture, political killing and disappearance, and arbitrary imprisonment. The financial and managerial resources devoted to them, in the UN system and elsewhere, are grossly inadequate, and reflect a lack of priority which contradicts the stated commitments of international organizations and of the governments which determine their financial allocations.

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Of course there has been a positive evolution in the development of international human rights standards and mechanisms; in the policy commitments of governments and in the real efforts of some of them to reflect these standards in national law and practice; and in the growth and assertiveness of human rights non-governmental organizations (NGOs) in all regions. The World Conference will focus in particular on the human rights mechanisms of the UN, but it is charged with reviewing progress in the field of human rights in general. The roles of all three categories of actors - of governments, NGOs and IGOs - need to be recognized and enhanced.

The credibility of the World Conference will depend critically upon the extent to which it is open and responsive to the concerns of NGOs from all regions; the effectiveness of the work of the UN and other international organizations for the promotion and protection of human rights and the prevention of violations will depend critically on the extent to which they take NGOs into a real partnership; and the sincerity of the commitment of individual governments to human rights domestically or in their foreign policies will be measured by the extent to which they are open to their own non-governmental community in subjecting their policies and practices to public discussion. It is not a good omen for any of these that one of the most difficult issues in the three meetings of the Preparatory Committee for the World Conference has been the participation of NGOs in the Conference and the regional preparatory meetings. The eventual decision, although it allowed for the participation of NGOs which do not have formal consultative status, set a bad precedent in subjecting their participation to "consultation" with governments, and arrangements have yet to be made which will allow the participation of NGOs from Eastern Europe and others without consultative status and ineligible for any regional preparatory meeting.

The prevention of human rights violations requires the promotion of a human rights culture - an awareness of the rights of individuals and the obligations of governments, and a determined effort to inculcate this awareness throughout the citizenry and throughout the machinery of government. Second, it requires the monitoring and effective investigation of human rights violations whenever they occur, and the accountability of those responsible. Third, it requires the active intercession of international organizations, other governments and the public across national boundaries. Each of these requires that the tripartite partnership of governments, international organizations and NGOs is strengthened.

Human rights awareness, education and training

A World Information Campaign for Human Rights was launched in 1988, and in recent years an increasing amount of promotional material - some useful, some less useful - has been available in major languages from Geneva. But the prospects of even the literate, urban citizen in many countries of obtaining basic human rights material in his or her own language from a UN Information Centre or office remain poor. Most governments - even in Europe - do little to fulfil their responsibility to make known the international human rights obligations they have assumed to their citizens, let alone to publicize recourse procedures, and are happy to leave it to NGOs to do so with little support. Some governments are beginning to take steps to reflect and inculcate a human rights culture in the formal education system, and this is an area where experience should be exchanged and best practice spread. NGOs - local, national, regional and international - have undertaken innovative human rights

education and awareness work, but are inevitably limited in their resources. Governments need to have the political will to undertake serious implementation of expressed commitments to human rights education, and the openness to couple the creativity and closeness to people of the best local NGOs with their own nationwide networks and resources.

A government which accepts its full responsibility for human rights protection must ensure that this acceptance pervades the machinery of administration. All too often foreign ministries, aware of their country's treaty obligations and of international standards adopted with their government's support at the UN or regional IGOs, do not succeed (if indeed they try) in achieving a commitment from interior ministries or other parts of government with operational responsibilities affecting human rights to work towards respect in practice for international standards. Federal governments face a major task in ensuring that state governments respect international standards, but real difficulties can become an excuse for non-compliance; even in unitary states central government has to be diligent to ensure the proper human rights conduct of local administration.

National human rights commissions and other national institutions with a specific human rights mandate have often been established as an exercise in external or internal public relations. They should not be accorded credibility if they enjoy little real independence of government, function as an alternative to an acceptance of responsibility by operational parts of the administration, and are unable to penetrate its more sensitive, security-related areas. They can serve a useful part of a serious strategy for improving human rights protection throughout government, but their effectiveness depends crucially on the status, independence, powers and resources accorded to them. And the most effective human rights commission can never be a substitute for the safeguards afforded by a comprehensive and effective legal system enforced by an independent, adequately resourced and accessible judiciary; rather, the recommendations and authority of such an expert body should contribute to the improvement of these safeguards in the area of human rights, and its own openness to local NGOs will help it to do so.

A government which does assume its full responsibility will need to engage in programs of training for officials whose responsibilities most affect human rights and in systematically spreading awareness of international standards. Central to this are security officials and all those involved in the administration of justice. Important human rights instruments in this area have been adopted by the UN through the work of the UN crime program and its former expert Committee on Crime Prevention and Control; the time is ripe for vigorous promotion of these standards and procedures for monitoring their implementation. Regrettably, however, the first session of the new UN Commission on Crime Prevention and Criminal Justice gave no special attention or priority to human rights issues, and a leading opponent of its doing so was the US government - a government which gives the highest profile to human rights in its foreign policy, but which like other governments is all too ready to subordinate this to domestic law and order concerns.

Some governments lack the financial, and some of the expert, resources required to carry out major human rights training programs, and could benefit in a number of ways from technical assistance in improving implementation of their human rights commitments. Of the limited resources available through the UN advisory services program, too great a proportion has been spent on seminars and fellowships with little relation to any serious governmental

commitment to improved implementation. The advisory services program has also been misapplied in situations of serious human rights abuse where it has had negligible impact in addressing the context of abuses, but has offered the government concerned a preferred substitute for effective human rights monitoring. There is a real need for the systematic development of a core of expertise in the provision of advisory services at the UN Centre for Human Rights and in regional bodies, and for additional resources to be available through the UN and other multilateral and bilateral assistance. But this needs to be directed to contexts where the government's commitment is real; to be available to national and local NGOs as well as to government institutions; and to be coupled with systematic project identification, planning, implementation and evaluation, in which the experience of NGOs should be fully drawn upon. An activity so crucial to human rights protection should have adequate levels of resources provided in the regular budgets of international organisations, and not be largely dependent on voluntary contributions.

Monitoring and investigation of violations

The second essential element of human rights protection is the monitoring and effective investigation of violations. While international organizations and NGOs have important roles, this is essentially the most crucial element of the commitment of governments themselves. However important are human rights education and training, the key to the prevention of violations is the knowledge - from example - that those responsible for violations will be held to account; that violations will be vigorously investigated and the perpetrators brought to justice. Disciplinary measures have their place, but the criminal justice system must be effective in its operation against crimes committed by agents of government. Special judicial inquiries and the investigative powers of national human rights commissions may be a necessary supplement to the ordinary machinery of justice; and where violations have become endemic, public commissions of inquiry, open to the evidence of NGOs, should investigate the entire pattern of abuses and propose reforms which will address it as well as insist upon the prosecution of those responsible.

In many countries where violations occur today, investigations which are established never culminate in publicly announced conclusions; the institutions responsible for the administration of justice are weak or inefficient, and frequently susceptible to pressure from other branches of government; military or other special tribunals are brought into play because they will not pursue prosecutions with vigor; and amnesty laws encourage impunity by closing investigations or preventing prosecutions.

It is in the monitoring of violations that NGOs play their most essential role, which makes it unsurprising but shameful that some governments should have attempted to limit their participation in the World Conference and its regional preparatory meetings. A realistic review of progress since the UDHR would recognize that the single most positive development has been the growth of human rights NGOs, especially at the national level, where they often face the most serious threats to the life and liberty of their activists. 1993 ought therefore to be marked by a new commitment to the protection of human rights defenders. One important aspect of this could be the belated adoption of a UN declaration "on the rights and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms", usually referred to as the declaration concerning human rights defenders. It would be instructive to calculate the

number of human rights defenders who have been killed, disappeared, tortured, imprisoned or subjected to harassment and intimidation since 1985, when the UN Commission on Human Rights established its working group to draft this declaration, and while its finalization has been delayed by a minority of governments seeking to impose restrictions on NGOs and other human rights defenders.

The role of international NGOs in human rights monitoring is well recognized, but their investigative access is not always fully accepted in practice even by those governments who press it upon others. Especially at the international level, the monitoring of economic, social and cultural rights by NGOs has not begun to match their effectiveness in the monitoring of civil and political rights, nor have they been involved to the same extent in further standard-setting. This is a major challenge which the non-governmental community should take up.

The monitoring procedures which exist through international organizations are well acknowledged to have developed greatly in number and in scope. This development includes the increase in the number of states accepting human rights treaty obligations, although this has been disappointingly slow in pace and has been accompanied by some disturbing reservations. The reservations of the US to its ratification of the International Covenant on Civil and Political Rights, especially regarding the right to life prohibiting the execution of juvenile offenders, and its failure simultaneously to ratify the International Covenant on Economic, Social and Cultural Rights, are the most deplorable recent case. With the welcome exception of the European Convention on Human Rights, the proportion of states accepting full monitoring through optional complaint procedures is still more disappointing. The commitment of governments in the year of the World Conference should be expressed in new ratifications (and removal of reservations) rather than in old rhetoric, and still more in their willingness to initiate a program of strengthening the effectiveness of the treaty monitoring bodies and theme mechanisms of the UN. Here again the partnership of NGOs with governments and international organizations should be strengthened. Governments should discuss their reports to treaty bodies with national NGOs, and they and the NGOs should publicize in their own countries both the reports and the dialogue with the treaty monitoring body. The treaty monitoring bodies themselves should further extend their openness to the input of NGOs.

Transparency should replace defensiveness in the accountability of governments to their own citizens regarding their record in promoting human rights. Only a very few governments present any kind of regular public appraisal drawn from their own monitoring of their human rights performance, which however adequate or inadequate is open to NGOs and others to criticize or confirm.

There have been increasingly insistent demands from governments that bodies engaging in human rights monitoring - national human rights commissions, NGOs and special rapporteurs and other international monitoring mechanisms - should investigate human rights abuses committed by non-governmental actors, notably groups waging armed opposition to governments. It is right that violations of established humanitarian principles should be exposed and condemned when they are committed by such groups, as well as when they are committed by governments or those operating with official connivance. It does not however follow that investigation of such acts is the role of human rights monitoring bodies, equally

with their investigation of state responsibility. The reason is simple, but in danger of being drowned out by the chorus of some governments. Governments have the strongest possible motive and will direct their utmost resources to investigate and publicise the criminal abuses of those attacking them, and will make every effort to see the perpetrators punished. It is when such acts are committed or condoned by the agents of the government itself in its perceived interests that the motivation to investigate and bring those responsible to justice all too often falters. The priority for human rights monitoring remains to overcome this reluctance or weakness on the part of those who have bound themselves by international human rights law.

Intercession

The third element in the prevention of human rights violations is the expression of concern for human rights protection across national boundaries, and the acceptance of its legitimacy. This legitimacy is formalised in the human rights mechanisms of international organizations, where - in principle at least - it has a solid basis in objective international human rights standards. The extent to which the informal "good offices" of the UN Secretary-General and other leading international officials are deployed in pursuance of such concerns is not publicly known, but should form an important part of the human rights commitments of the international community. Human rights concerns have also come to form an increasingly explicit and accepted part of the bilateral dialogue between governments. Public concern has been focussed with increasing effect through NGOs, with a particular role being played by Amnesty International, the founding inspiration of which was to offer ordinary citizens anywhere in the world a potential direct part in the application of pressure on governments other than their own.

The weaknesses of these modes of intercession as they are currently practised by governments and international organizations exist in the ways in which they may fall short of being impartial, reciprocal and balanced: impartial in their application with similar determination to equally serious human rights situations; reciprocal in their application to and from countries of very different political and economic strength in the international community; and balanced in their regard to the promotion of economic, social and cultural rights as well as to civil and political rights.

Human rights crises: prevention and intervention

The weaknesses of existing human rights machinery can be seen most clearly in its inability to anticipate and prevent grave human rights crises, or - once they are occurring - to act promptly to address them.

Despite discussion over several years about the need for early warning systems, there is as yet no well-identified focal point within the UN system to which those who are close to a deteriorating situation can communicate information, nor do these exist regionally. Such a system or systems is essential if preventive efforts are to be brought into play. NGOs could play a significant role in providing such information, including information they have not yet placed in the public arena, if worthwhile early warning systems were instituted.

Once a situation of gross violations has begun to emerge, international mechanisms must be able to act rapidly. In the past, UN action has depended not only on the need for a substantial number of governments to agree to mandate action, but also on the point in the annual cycle of meetings of the human rights bodies at which the crisis occurs. The UN theme mechanisms do provide the possibility of prompt communication to governments of concern regarding individual cases, but have no real capacity to address a human rights crisis, especially one which involves numerous violations of a wide range of fundamental rights. Their work is not coordinated, even though they are often addressing different facets of an overall human rights crisis. Their representations can be and are disregarded at little political cost, at least in the short term. No major pressure is brought to bear to persuade a government to invite or accept a country visit until the seriousness of the situation is long-standing. Thus pressure for comprehensive country scrutiny has had to await an appropriate meeting of the Commission on Human Rights, the Sub-Commission or - in the rarest of cases - the General Assembly. More recently, the Austrian government has taken the lead in discussions at the UN Commission of procedures for more rapid action, and the first special meetings of the Commission in 1992 on the crisis in former Yugoslavia have set an important precedent. But both special meetings and the inter-sessional procedure under discussion are too cumbersome and dependent on the mobilisation of a majority of governments to guarantee rapid response.

The standing organ of the UN, the Security Council, is mandated to address situations which "threaten international peace and security", and precedents have now been set regarding internal conflicts giving rise to grave human rights violations - especially when they involve refugee flows - as containing such a threat. But the Security Council is reluctant to regard itself as having a human rights mandate, and this will certainly remain the position of the great majority of member states as long as the governments which dominate the Council exercise such blatant selectivity in its conduct. Only if clear criteria and objective fact-finding are developed as its basis can Security Council action on human rights situations properly be extended.

It is sometimes possible for the UN Secretary-General to take a human rights initiative on his own authority, as was done in the despatch of a personal envoy to "obtain clarification" on the Dili killings by the Indonesian military in East Timor. However, this illustrates the weakness of such an initiative: it was unlikely to have been taken on pure human rights grounds if the Secretary-General had not already been playing a good offices role in relation to the disputed status of the territory; the visit only took place some three months after the massacre occurred; and the envoy's report has never been published nor any follow-up action taken.

UN initiatives which have been developed outside its Geneva-based program have assumed important responsibilities for preventing human rights violations, most notably the UN Observer Mission in El Salvador (ONUSAL) and the UN Transitional Authority in Cambodia (UNTAC). Other UN operations which have similarly emerged from its role in peace-making and peace-keeping, including those involving the holding of elections or referenda, have a less direct human rights mandate, but as the Secretary-General says in his *Agenda for Peace*, "increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military". There has however been little involvement of human rights

experts in developing the human rights protection aspects of these operations. Nor is there as yet any guarantee that this growing experience will be analyzed and institutionalised within the UN human rights system, or that the human rights perspective and experience will be centrally involved in the coordination of the work of the UN system.

I therefore believe that the proposal for a UN Special Commissioner for Human Rights advanced in the context of the World Conference by Amnesty International is a key measure to address many of the current gaps in the international system of human rights protection. Such a new UN authority, based at the centre of its decision-making in New York, having high political standing and not dependent in its day-to-day work on the individual authorization of each of its specific activities, should be able to act with greater speed and impartiality on an independent appraisal of the human rights situation in different countries. It should have the authority and resources to undertake a range of possible responses to a particular situation, including appointing experts to investigate and deploying on-site monitors when necessary. It should ensure that human rights considerations are fully integrated into other UN activities, especially in the area of peace-making and peace-keeping. It should enter into dialogue with governments and coordinate advisory services and technical assistance in situations where it is ascertained that the government concerned has the political will to address human rights concerns. It should be accessible to NGOs, both in terms of receiving information from NGOs on particular situations and in involving domestic and international NGOs in country programs for the protection and promotion of human rights.

Plans of action

The World Conference, in identifying ways to overcome obstacles to progress in the field of human rights, needs to stimulate more effective action not only by the UN but by individual governments and by other international organizations. Adoption of the Australian government's proposal that each government should prepare its own National Action Plan for improved observance of human rights standards for submission to the Conference would be an excellent way of promoting this, and of opening up government action to national debate. Such explicit national plans, followed up by implementation reports, could be drawn up and made public by as many governments as are willing to do so even if the proposal is not adopted in the context of the World Conference. Amongst items these should cover are a review of ratifications not yet undertaken, complaints procedures not yet accepted and reservations made to human rights treaties; an accounting of the reports submitted under these treaties and the local availability of these reports and the record of their scrutiny; a description of the human rights education and training programs to which the government is committed; and a statement of policy and practice towards the operation of NGOs and their access to official institutions and policy-making.

Regional organizations could similarly undertake their own self-assessment of the effectiveness of their human rights program and machinery and make public their own action plans. Despite the sophistication of the human rights machinery of the Council of Europe, it has so far proved inadequate to tackle a continuing pattern of grave violations in one of its own member states - a pattern including routine and systematic torture, and extrajudicial executions. There is no effective mechanism within the Council of Europe or other European institutions to tackle a serious and systematic pattern of human rights violations in a member state. The inter-state complaint mechanism has not proved adequate, and the individual

complaints procedure is not generally the most appropriate or efficient way to tackle the root problems inherent in such a situation; neither enables NGOs to submit information about systematic practices of violations. The work of the European Committee for the Prevention of Torture is encouraging but limited to one major form of violation. More determined machinery for implementation of economic, social and cultural rights is needed in the European context, as it is elsewhere. The accessibility of NGOs to all aspects of the Council of Europe's human rights organs is not yet consistent with the recognition by European governments of the legitimacy and importance of their role. In this year of the World Conference, the Council of Europe could set an example by presenting publicly its own analysis and plan for the enhancement of its own work in the promotion of human rights and prevention of human rights violations.

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THE IMPORTANCE OF THE INTER-PLAY BETWEEN ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND CIVIL AND POLITICAL RIGHTS

Philip Alston*

A. Introduction

1. In a series of lectures given in 1950 in honour of the famous economist Alfred Marshall, an English sociologist of the same name (T.H. Marshall) focused on the historical development in the West of those attributes which were vital to effective "citizenship".[1] He distinguished three stages in this evolution. Despite an apparent lack of familiarity with the terminology so recently adopted in the Universal Declaration of Human Rights of 1948, he cam very close to following it by classifying those three stages in terms of the realization of civil, political and social rights.

2. In an analysis which is reminiscent of (while at the same time being rather more insightful and productive than) the much later theory about the three generations of human rights, Marshall traced the "formative period in the life of each" of these types of rights to a different century. For him, civil rights had been the great achievement (in terms of the attainment of an adequate concept of citizenship) of the eighteenth century, political rights were the principal achievement of the nineteenth century and social rights were to be the contribution of the twentieth century.

3. By the standards of the day, there was nothing particularly surprising or radical about Marshall's analysis. Even Friedrich Hayek, one of the great exponents of what might be termed free-market ideology, had written in 1944 in his *Road to Serfdom* of the need to ensure the "certainty of a given minimum of sustenance for all" in the form of "some minimum of food, shelter and clothing sufficient to preserve health and the capacity to work".[2]

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[1] See T.H. Marshall, *Citizenship and Social Class* (Cambridge, Cambridge University Press, 1950. For a later analysis of the same themes see R. Dahrendorf, *The Modern Social Conflict: An Essay on the Politics of Liberty* (Berkeley, University of California Press, 1988).

[2] F. Hayek, *Road to Serfdom* (Chicago, University of Chicago, reprint, 1966) pp. 120-121.

4. What is surprising, however, is that, as the twentieth century draws to a close, Marshall's prediction that it would be the century in which social rights would be vindicated as an essential component of any adequate concept of citizenship is now most unlikely to be realised. While the most important and authentic part of the struggle for social rights is at the national level, an analysis of the situation at the international level is nevertheless very instructive, especially because, in the final analysis, the fate of social rights at the two levels is intimately intertwined.

B. Economic, Social and Cultural Rights in the Context of the Second World Human Rights Conference

5. One of the principal achievements of the first World Conference on Human Rights, held twenty-five years ago in Teheran, was to accord a prominent place in international discourse about rights, as well as about development issues, to economic, social and cultural rights. It is thus timely to evaluate the legacy of Teheran, at least as a prelude to identifying what remains to be done in relation to these rights.

6. International conferences and major anniversaries, such as Vienna 1993, are as much occasions to celebrate progress made and to seek its consolidation, as to map out new goals and strategies. But, at the risk of seeming unduly negative and pessimistic, it seems clear that the principal task of the Vienna Conference in relation to these rights is to sound alarm bells warning of the large-scale, deeply ingrained, neglect of economic, social and cultural rights over the past quarter of a century since Teheran.

7. While diagnosis is always a necessary prelude to effective prescription, the diagnosis is often so self-evident that little time need be devoted to it. In the present case, an accurate diagnosis, combined with a recognition of its validity, may well be more important than any particular prescription that might follow from it. It is thus essential to review, in some detail even in a short paper, the current situation in terms of "the inter-play of economic, social and cultural rights with civil and political rights".

C. The Theory of Interdependence

8. In terms of the philosophical, ethical, religious, ideological and other foundations of human rights, support for the notion that the two sets of rights are interdependent is widespread and is clearly reflected in international human rights instruments. Thus, the preamble to the Universal Declaration of Human Rights observes that "the highest aspiration of the common people" is the "advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want".[3] The Universal Declaration sought to respond to this aspiration by clearly recognizing both sets of rights and placing them on an equal footing.

9. Through their participation in United Nations endeavours, States began immediately to reflect this "inter-play" through the endorsement of various slogans. Thus, in the very early 1950s, when the two International Covenants were being drafted, the two sets of rights

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[3] Second preambular paragraph.

were said to have been "interconnected and interdependent".[4] This phrase evolved in the 1960s and 1970s to recognize that the different categories were "indivisible and interdependent".[5] Subsequently, linguistic preferences shifted so that some States had come by 1990 to prefer a reference to "inter-relatedness", while others insisted upon "indivisibility".[6]

10. While these semantic debates have occupied much time on occasions, they usually reflect a concern over the question of priorities rather than over the importance of either set of rights *per se*. Only one State has regularly challenged the notion that economic, social and cultural rights are rights. The United States has, since 1981, frequently sought to characterize these rights as 'goals', or 'aspirations' but certainly not 'human rights'. Despite the fundamental challenge that this position has represented to the international normative consensus on human rights, most States (and in particular those in the Western Group) have been eerily silent in response. This pusillanimous attitude, in turn, has facilitated a general downgrading of these rights, in direct contradiction of the formally accepted position.

11. It is important to note, however, that, despite the clear inconsistency involved, the United States has continued to commit itself to the promotion of economic, social and cultural rights, as human rights, in the context of a steady flow of major documents adopted by the Conference on Security and Co-operation in Europe. Perhaps more encouraging is the fact that the US Ambassador to the UN Commission on Human Rights during the Bush Administration has recently called for US ratification of the Covenant on Economic, Social and Cultural Rights. Such action would, in his view, "serve as a sign to the rest of the world that we [the US] are willing to speak to the need for economic justice, to recognize the importance of the economic rights of individuals, to admit that the necessitous man is not a free man".[7]

12. In summary then, with the exception of the position adopted by the United States over the past twelve years, the principle of the equal importance of the two sets of rights has been universally accepted and endorsed. It continues to be so today in all of the relevant resolutions adopted by the Commission on Human Rights and the General Assembly.

D. The Practice of Interdependence

13. But while the theory is sound, the current situation within the United Nations in relation to the inter-play between the two sets of rights is characterised by an immense discrepancy between that theory and the practice. Although it has not infrequently been

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[4] UN doc. A/2929 (1955), Chap. II, para. 7.

[5] See, e.g., General Assembly resolution 32/130 (1977), para. 1(a).

[6] See, e.g., the Final Declaration of the Non-Aligned Movement Summit, Jakarta 1992, para. 75.

[7] K. Blackwell, "Review of Tolley, UN Commission on Human Rights", 14 *Human Rights Quarterly* (1992), p. 501.

suggested that economic and social rights have come to dominate the human rights work of the United Nations,[8] there is not a single important indicator of which I am aware which would show anything other than the relative neglect, and often also the absolute neglect, of economic, social and cultural rights in practice.

14. Whether one takes the number of resolutions adopted, the length and incisiveness of the relevant debates, the emphasis adopted in fact-finding, the focus of the studies undertaken, the emphases in the Advisory Services Programme, the topics with which Fact Sheets and other forms of public information have been concerned, or some other measure, economic, social and cultural rights continue to be very widely neglected or ignored. This is not to deny the importance of the achievements that have been recorded, including especially the creation of the Committee on Economic, Social and Cultural Rights in 1987.

15. But the reality stands in stark contrast to the situation in the world in 1993 in which denials of the most fundamental of economic and social rights continue to take place on a massive scale which affects hundreds of millions of people. In addition, the enthusiastic embrace of free market economics in many countries has gone hand in hand with a further downgrading of the importance attached to the role of the State as the ultimate (but not necessarily the only or even the primary) guarantor of economic and social rights.

16. The situation within the United Nations will be best illustrated below when consideration is given to the arrangements relating to the work of the Committee on Economic, Social and Cultural Rights. Before looking at that, and related issues, it is essential in the context of a conference convened by the Council of Europe to observe that the relative neglect of economic and social rights in the United Nations context is mirrored to a very significant extent within Europe.

17. While the past couple of years have brought some welcome developments (such as the adoption of the Turin Protocol to the European Social Charter), the fact remains that ratification of the European Convention on Human Rights is mandatory for would-be members of the Council, while ratification of the Charter is optional. As a result, almost one quarter of the Council's Member States have so far declined that option. The implementation procedures for the Charter are extremely weak, having been burdened with a range of institutional checks and balances which could only have been designed to promote ineffectuality.

18. The Turin Protocol is a major advance, provided that it enters into force rapidly (which seems most unlikely), but even the new procedures will provide compelling evidence of the much higher priority accorded to civil and political rights. This is reinforced by the relative staff resources devoted to implementation of the two instruments. It is hardly surprising then that one of the members of the Charter's Committee of Independent Experts has recently described the Charter as having "led a twilight existence" and has lamented that

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[8] See, e.g., M.B. Abram, "Human Rights and the United Nations: Past as Prologue", 4 *Harvard Human Rights Journal* (1991), pp. 69-83; and J. Donnelly, "Recent Trends in United Nations Human Rights Activity: Description and Polemic", 35 *International Organization* (1981), pp. 633-655.

"various factors have conspired to prevent [it] realising its full potential. Most such factors result from a lack of political will".[9] In his view, European "States (...) generally have not placed concern for economic and social rights on their list of priorities...".[10]

19. This gloomy assessment is also borne out by recent experiences in the European Community, in which the status of social rights was described as "anaemic"[11] even before the Maastricht Treaty had to accept that, because of opposition to those rights, their promotion within the Community would have to be dealt with through arrangements situated outside the Community's basic framework.

20. This analysis is not intended to single out Western States as the sole, or even the principal, culprits when it comes to the neglect of economic, social and cultural rights. Rather, the aim is twofold. The first is to illustrate the situation which pertains in the vast majority of countries in the world by reference to those States that are perhaps best placed to implement economic and social rights effectively. The second is to emphasize that one of the starting points for any effective global endeavour to ensure recognition of the importance of the two sets of rights must be a concerted effort to do so also at the national and regional levels.

E. Some Reasons for the Neglect of Economic and Social Rights

21. Various theoretical and conceptual objections to economic and social rights as human rights continue to be cited, even in UN debates. For present purposes, however, it must be assumed that the obligations undertaken by almost all States to promote economic, social and cultural rights have rendered these discussions moot. States have accepted clear obligations not only by virtue of ratification of the Covenant on Economic, Social and Cultural Rights or its regional counterparts but also through ratification of several of the other principal United Nations human rights instruments. Thus, it is inconceivable that a State Party could comply effectively or fully with its obligations under the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women or the Convention on the Rights of the Child without making progress in relation to the many economic, social and cultural rights recognised in each of those conventions.

22. But while the academic dimensions of the debate are of little relevance in the present context, it is instructive to review some of the factors that have facilitated, and perhaps even stimulated, the neglect of these rights. Pre-eminent among them was the impact of the Cold War and of the ideological struggles between Communism and Capitalism. This factor changed what was a rational and balanced debate between 1944 and 1947 (culminating in the

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[9] D. Harris, "A Fresh Impetus for the European Social Charter", 41 *International and Comparative Law Quarterly* (1992) p. 659.

[10] *Ibid.*, p. 661.

[11] B. Hepple, "The Implementation of the Community Charter of Fundamental Social Rights", 53 *Modern Law Review* (1990), 643.

adoption of the Universal Declaration) into a struggle that encouraged the taking of extreme positions and prevented objective consideration of the key issues raised by the concept of economic and social rights.

23. To a lesser extent, the North-South dimensions of the human rights debate have also created significant obstacles in relation to the consideration of economic and social rights. In the 1990s those issues will continue to be debated, but the discussion has aleady become far less ideologically doctrinaire and predictable and more open to reason and compromise.

24. One of the most important reasons for the neglect of economic, social and cultural rights within the overall human rights framework relates to the fact that their promotion and their effective factoring in to broader policy equations require skills and expertise that are alien to what has been termed the normative-judicial model of human rights implementation.[12] That model has significant shortcomings even in relation to some civil and political rights but it is one to which the human rights 'community' at national and international levels is firmly committed. That 'community' is dominated by lawyers whose tools are traditional legal reasoning, the use of legal institutions and techniques and the pursuit of familiar types of remedies such as administrative regulations, legislative programmes and court judgments.

25. Whether the alternative model is termed an "access to justice" model[13] or something else, some of its principal characteristics will inevitably be alien to this tradition. The result is that the human rights lawyers, the diplomatic representatives, the Secretariat officials and the NGO representatives who have come to dominate human rights discussions and forums will feel distinctly ill at ease and ill-equipped to deal with many of the most pressing issues arising from a concern with economic, social and cultural rights. As long as this circule of actors is not expanded, the prospects for undertaking the necessary reforms are very slim indeed.

26. The final reason for neglect, to which reference should be made in this context, is that the proposition that minimum core economic and social rights ought to be accorded to every individual is still almost automatically made subject by decision-makers to an economic calculus which will often culminate in various economically compelling reasons as to why such rights can simply *not* be recognised. The same sort of process was once applied to certain civil and political rights when it was argued, for example, that giving the vote to women was too costly, that giving the vote to illiterates was not rational because they were inevitably ill-informed, that allowing trade union rights at the expense of industrial harmony was economically ill-advised, that accused persons did not warrant the expense of a fair trial, and that rapid industrialisation required unfettered central government control over all forms of political and economic decision-making. Over the past fifty years, all such arguments have been gradually rendered irrelevant by the firm and uncompromising commitment to the

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[12] See generally A. Cassese, A. Clapham and J. Weiler, "1992 - What Are Our Rights?: Agenda for a Human Rights Action Plan", in *ibid., Human Rights and the European Community: Methods of Protection* (Baden-Baden, Nomos, 1991).

[13] *Ibid.*

relevant values that has been both implicit and explicit in the acceptance of the basic principles of civil and political rights.

27. But decision-makers have still not been able to bring themselves to accept the equivalent proposition to the effect that the recognition of economic, social and cultural rights puts the question of whether these rights should be accorded beyond the realm of debate, especially on the grounds of some anticipated negative impact in economic terms. In effect, individual States and the international community as a whole have made a commitment to the realisation of those rights, and that commitment must not be read as being contingent upon a demonstration that it is economically or otherwise profitable or rewarding for the Government (or the society as a whole) to accord those rights.

28. Indeed, just as there will be occasions when rational, and perhaps even altruistic, individuals might be able to make a powerful case for the suppression of free speech, for the deferral of elections, for the imposition of limitations upon trade unions and political parties, so too will there be many arguments (although predominantly of an economic nature in this case) against feeding (some of) the starving, educating (some of) the illiterates, or providing primary health care to the ill and vulnerable. But the elevation of these values to human rights status must, as an absolute minimum, mean that they, and whatever measures are necessary to secure their realisation, are not negotiable. That is not to say that there is not enormous room for debate as to the best policies for achieving the desired objectives, but simply that the objectives themselves are not open to refutation on economic rationalist or other grounds.

F. Giving Effect to Economic, Social and Cultural Rights as Rights

29. One of the principal objectives of the World Conference on Human Rights is to promote the effective implementation of economic, social and cultural rights. It is therefore essential to identify specific, concrete measures that may be endorsed by the Conference in June 1993. Such a task is not especially difficult in light of the recent completion of a major, first-rate study on "The Realisation of Economic, Social and Cultural Rights" by a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr Danilo Türk.[14] In addition, the Committee on Economic, Social and Cultural Rights has, in the course of the seven sessions it has held between 1987 and 1992, identified many measures which have yet to be given effect by the relevant actors. The main challenge therefore is to select those measures which appear to be the most important and which could most appropriately be a focus of concern by the World Conference. The following proposals thus constitute a ten-point plan, adoption of which would attest to the determination of States and the international community to take economic, social and cultural rights seriously. Until these or similar proposals are adopted, talk of the "inter-play" or "indivisibility" of the two sets of rights will remain entirely at the level of mere aspiration.

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[14] The final report is contained in UN doc. E/CN.4/Sub.2/1992/16. See also the preliminary report (UN doc. E/CN.4/Sub.2/1989/19), the first progress report (UN doc. E/CN.4/Sub.2/1990/19) and the second progress report (UN doc. E/CN.4/Sub.2/1991/17) submitted by the Special Rapporteur between 1989 and 1992.

I. An abiding commitment to the realisation of economic, social and cultural rights should immediately be affirmed at all levels.

30. Very few States have made a clear, unambiguous statement of commitment to the realisation of economic, social and cultural rights at the national level. Most have done so in the international arena, for international consumption, but not domestically. For the purpose of making such a statement, the vital and indispensable ingredient is recognition of the status of these rights as human rights. It is not sufficient for this purpose for a government to state that it hopes to eliminate homelessness, malnutrition, or forms of child labour that deprive access to primary education, or that it will devote more resources to such issues, unless those commitments are also cast in terms of human rights. The use of such terminology is inherently empowering and provides an important element of legitimacy and validation to the claims of those whose rights remain unrealised.

31. Any such reaffirmation must, if it is genuinely motivated, be accompanied by an education and public information programme focusing on these rights. An enormous amount remains to be done in this regard by the United Nations itself. It is revealing that of some 20 or so Fact Sheets issued by the Centre for Human Rights, only one deals with these rights and it does so in the space of a very few pages at a very superficial level. Other than the lengthy, complex and technical Sub-Commission studies by Türk and Eide, there is no United Nations public information material dealing effectively with these rights. I am unaware of any training or educational activities of the Centre (with the exception of the seminar being held this week in Geneva) which have focused, in any depth, on the nature and scope of economic, social and cultural rights. The same is true, in the great majority of cases, at the national level.

II. Universal ratification of the Covenant on Economic, Social and Cultural Rights should be sought.

32. The fact that over 60 States have failed to ratify the Covenant is to be regretted. Among those are some States which have frequently invoked international human rights standards vis-à-vis other States and some which have urged that much greater attention be paid to economic, social and cultural rights. The inconsistency and undesirability of these situations are clear. An urgent appeal should be addressed to each of the relevant States requesting that very careful consideration be given to the possibility of ratification within the shortest possible time frame. NGOs at the national and international levels should be urged to encourage such ratification wherever possible.

III. Expertise on economic, social and cultural rights must be developed urgently within the UN Centre for Human Rights.

33. The possibility of developing an effective programme for the promotion of economic, social and cultural rights in the context of United Nations activities is deeply undermined by the absence of a single official with any particular expertise in these rights. Special Rapporteurs, country Rapporteurs, advisory services experts, members of treaty bodies, officials of other UN agencies, and non-governmental experts, have not even one single person within the Centre to whom they can turn for expert advice or assistance in relation to

these rights. Similarly, the Centre has no meaningful collection of materials, books or documents relating to these issues. While the UN Centre for Human Rights is already radically under-staffed, and is being subject to steadily increasing demands, it is nevertheless imperative that economic, social and cultural rights be specifically addressed in future staffing arrangements.

IV. States must develop means by which economic, social and cultural rights can be formally vindicated at the national level.

34. It has often been said that a right without a remedy is no right at all. To the extent that this criticism has come to be equated with the demand that all rights be justiciable - in other words, capable of being enforced by a court of law - it is clearly misplaced in relation to international human rights formulations. By the same token, however, it is true that where a Government specifically recognises a particular human right, but then provides no means by which that right can effectively be vindicated by an individual or a group of citizens (or residents), there is a point at which such recognition will be meaningless and might even be characterised by some observers as an act of bad faith.

35. There are many ways in which provision might be made for the vindication of these rights. They are too numerous, and often too closely related to specific legal and governmental systems, to warrant enumeration in this paper. It must be said, however, that extraordinarily few Governments have informed the Committee on Economic, Social and Cultural Rights of specific means by which any of the rights contained in the Covenant (other than those relating to labour matters - articles 6 to 8) can be vindicated except through the electoral system.

36. This situation is entirely unsatisfactory and the World Conference should call upon all States to identify specific means by which the various rights contained in the Covenant (and in articles 22 to 27 of the Universal Declaration) can be vindicated. This information should be communicated to the Commission on Human Rights at the earliest opportunity. At the same time the Commission, or the Sub-Commission, should appoint a Special Rapporteur to study this specific issue, which goes to the heart of the widespread neglect of economic, social and cultural rights as human rights.

V. An optional protocol to the Covenant should be adopted which would provide for the submission of complaints alleging the violation of economic, social and cultural rights.

37. The Committee on Economic, Social and Cultural Rights has recently called upon the relevant United Nations organs to consider the drafting and adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which would permit the submission of complaints alleging violations of the rights recognised therein. The discussion paper endorsed by the Committee will be submitted to the World Conference. It makes clear that acceptance of any such procedure by individual States would be entirely voluntary, that all of the procedural safeguards that apply to other such international procedures would be applicable and that the procedure could be made subject to other

limitations such as a requirement that violations complained of should be 'significant', 'widespread', 'systematic', etc.

38. The case in favour of such a procedure rests essentially on the following arguments: (a) existing procedures are not adequate to protect the rights in question in the face of major violations; (b) the exclusion of economic, social and cultural rights from such procedures highlights the unequal treatment of one set of rights vis-à-vis the other; and (c) it is essential that such a procedure be created in order to provide the opportunity for the development of some jurisprudence relating to economic, social and cultural rights (in the continuing absence of such jurisprudence, the second-class status of those rights will inevitably be maintained).

39. The Committee has noted the following advantages of such a protocol: (a) a complaints procedure brings concrete and tangible issues into relief; (b) the focus on a particular case provides a framework for inquiry which is essential and is otherwise lacking in this area; (c) the existence of an international remedy of this type will encourage governments to provide more effective domestic remedies; (d) it would require individuals and groups to formulate their economic, social and cultural rights-related complaints more precisely and in terms of the specific obligations contained in the Covenant; (e) such a procedure would ensure that governments were much more responsive to international developments in relation to these rights; and (f) a complaints procedure is capable of producing a tangible, positive outcome for an individual whose rights have been violated.

VI. Non-governmental organisations in the human rights field should urgently consider what can be done to remedy the present situation in which the great majority of those NGOs which are most active at the United Nations level pay little more than lip service to economic, social and cultural rights.

40. There is very little effort made by most NGOs in consultative status with the Economic and Social Council to contribute to United Nations debates over economic, social and cultural rights or to report in any systematic way on the performance of States in relation to their obligations pertaining to these rights. While there are some important exceptions in this regard, and while each NGO must be free to choose its own preferred focus, the overall contribution made by NGOs is, as a result, very significantly skewed. This in turn has several consequences: (a) organs dealing with economic, social and cultural rights issues can generally expect very little information or support from the NGOs which have otherwise come to be accepted as indispensable partners in relation to civil and political rights endeavours; (b) the tendency to emphasise civil and political rights, and to devote relatively little attention to the other set of rights, is reinforced; (c) NGOs and their associates, who are by far the most effective links between the international and domestic levels, provide very little feedback to their constituencies in relation to economic, social and cultural rights; and (d) consciousness-raising and educational campaigns at the national level often convey the impression that internationally recognised human rights law addresses only a very small range of rights, thus perpetuating a fundamental misconception about those rights and the very basis upon which they have been accepted by States.

VII. States Parties to the Covenant on Economic, Social and Cultural Rights should seek to enhance the domestic significance and effectiveness of reporting.

41. For a variety of reasons, the potential effectiveness of the international monitoring arrangements established under the Covenant on Economic, Social and Cultural Rights depends heavily upon the extent to which each State Party is prepared to attach importance to the reporting process at the domestic level. To date, very few States have taken any of the measures that have been suggested by the Committee in this regard. Thus, for example, in the absence of specific benchmarks set by each State Party in relation to minimum levels of enjoyment of specific rights, it is unlikely that either domestic or international monitoring will be very effective. Similarly, as noted above, in the absence of any procedures or institutional arrangements designed to enable individuals or groups to vindicate any of the relevant rights, there is unlikely to be any significant development of the normative content of the rights. This is especially so in light of the large number of jurisdictions in which economic, social and cultural rights are excluded from the purview of national human rights institutions and treated as being clearly and comprehensively non-self-executing.

42. Another approach which has frequently been suggested by the Committee is for the Governments concerned to seek to ensure the involvement of NGOs and the leading social partners in the reporting process. This may be done in many ways, including: (a) the consultation of NGOs in the preparation of reports; (b) the involvement of representatives of the main economic and social sectors in the preparation of the report; (c) the systematic inclusion in the report of information from non-governmental sources; (d) the widespread dissemination of the report domestically and the encouragement of comments over its content; or (e) the inclusion of NGO representatives in the delegation presenting the report to the Committee. In the absence of any of these types of initiatives, the likelihood is that the process of preparing a report will be treated as a routine and burdensome bureaucratic task, and will accordingly make little, if any, contribution to domestic efforts to ensure economic, social and cultural rights.

VIII. Resources should be provided which would enable the Committee to carry out its monitoring functions effectively.

43. At present, the Committee on Economic, Social and Cultural Rights receives no administrative, legal or other support except in terms of the preparation of the basic documentation for each of its sessions and the provision of the 'annual' reports of the World Bank, UNDP and UNICEF.[15] Other, alternative sources of information have not, in the past, been collected by the Secretariat despite frequent requests that this be done. No serious preliminary analysis of any of the reports is undertaken by officials with expertise or knowledge in the matters or countries under review. No general research work is carried out in preparation for the drafting of "general comments"; no work is done to encourage contributions to, or to structure the arrangements of, the Committee's annual "day of general

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[15] In other words: the *World Development Report* of the World Bank; the *Human Development Report* of UNDP; and the *State of the World's Children Report* by UNICEF.

discussion". Finally, the specific reports of major NGOs on countries appearing before the Committee are almost never available from the Secretariat.

44. The result is that all of these functions are expected to be carried out by a Committee whose members usually meet for a single annual session, who receive no honorarium, who are provided with no facilities whatsoever in Geneva (beyond limited access, without borrowing privileges, to the overall UN library) and who receive virtually no substantive documentation or information of specific relevance to the Committee's work from the Secretariat between sessions.

45. Most of these shortcomings are due to the inadequate staffing of the Centre, but they also reflect the relative priorities of the Secretariat. In the absence of access to adequate alternative sources of information, and as long as no analysis of issues and materials is undertaken in advance by the Secretariat, the quality of the supervisory work performed by the Committee can never meet even the minimum standards which should be expected, indeed demanded, of any serious international human rights monitoring procedure.

46. Another issue also warrants consideration in this context. In the economic and social rights field very extensive reporting is undertaken in very many countries by international agencies such as UNDP, the World Bank, UNICEF, FAO, ILO and WHO. Under present arrangements, none of this country specific material is available to the Committee. The result is that the total amount of information usually before the Committee when it is examining the situation in a given State Party is infinitely less detailed, often less focused and less reliable, and certainly less comprehensive than information which could automatically be available if effective cooperation between the relevant treaty body and the UN system could be achieved. At present, however, with the partial exceptions of ILO and WHO, none of these agencies contributes any country-specific information to the Committee (beyond the provision of publicly available annual statistical yearbooks, etc.).

IX. States Parties to the Covenant should be provided with an appropriate incentive to take their reporting obligations seriously.

47. The Covenant was carefully drafted so as to emphasise the relevance of the provision of technical cooperation (advisory services) in situations in which the State Party is unable, of its own accord and from its own resources, to achieve the realisation, especially at a minimum core level of adequacy, of a given right. However, although many resolutions have addressed the matter, and many general statements have been made as to the potential availability of advice and/or resources, the fact remains that there is no credible link whatsoever between the reporting procedures under the Covenant and the provision of any advice or assistance directed at the resolution of a particular problem.

48. Similarly, the provision of assistance to those States Parties which have not been able to fulfill their reporting obligations for a number of years remains theoretically available but is, in practice, far from satisfactory. No principles have been devised to assist in answering basic questions such as: when might a State be eligible for such assistance; what form would assistance take; who would provide it and how would that person avoid any potential conflict of interest (e.g. as a member of the appropriate treaty body); what is the relationship between overdue reports under different human rights instruments; what possibilities should exist for

the provision of aid to remedy specific defects/problems identified in the process; and what should the relationship be between the provider of such advice and the UN Resident Coordinator and other international officials working in the country concerned.

49. This list is only illustrative. Its purpose is to show that a serious advisory services programme linked to reporting under the Covenant would need to address a wide range of questions which have not yet even been asked within the confines of the existing Programme.

X. Training programmes need to be established in the field of economic, social and cultural rights.

50. It is too often assumed that training programmes are to be directed primarily at national level officials in developing countries. In the field of economic, social and cultural rights the need for such programmes begins with the officials of the UN Centre for Human Rights, the Special Rapporteurs, members of expert groups, members of treaty bodies and others. Such programmes will not be easy to devise, let alone to fund. The starting point must be serious consultations among officials of some of the key UN and other international agencies, followed by the preparation of professionally produced training programmes and resource materials. It is time we stopped thinking of human rights, and particularly economic, social and cultural rights, as a matter on which any lay person can rapidly gain expertise. It has evolved from a field in which it was once sufficient to talk of a few basic standards and to demand that blatant violations cease, to one in which the norms, procedures and institutions are complex and often highly specialised, the skills required are often multidisciplinary, and in which sustained and carefully targeted training is indispensable.

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DEVELOPMENT AND THE PROTECTION OF HUMAN RIGHTS

Neelan Tiruchelvam*

I.

Within the past few years, the world has witnessed momentous changes. Perhaps there is no comparable period during which the course of human destiny has been so dramatically changed. During these years, we witnessed the liberal democratic transitions in Eastern Europe and the collapse and subsequent disintegration of the Soviet Union into sovereign, equal and independent Republics, somewhat loosely linked together as the Commonwealth of Independent States. These changes had important consequences for the developing world, for with the collapse of an ideology there was similar loss of certainty with regard to the efficacy of an alternative development vision.

This paper will seek to examine the interrelationship between three of the dominant ideas of this decade: development, democracy and human rights. We will more concretely address the following themes in relation to the place of development in the protection of human rights:

a) use of development assistance and economic relations between states to promote human rights;

b) the role of international financial institutions and development agencies and the models of economic development advocated by these institutions and agencies and their impact on human rights;

c) the role of civil society and the discourse on development and human rights. These issues would be explored against the backdrop of the ideological and policy changes within South Asia.

The South Asian region is one characterised by extraordinary geographical, political and socio-economic diversity. Part of the region consists of an archipelago comprising sparsely populated coral islands, the Maldives, with a one party republican form of government; and two land-locked semi-feudal states, Bhutan and Nepal. Bhutan remains a monarchy while Nepal underwent recently a dramatic political transition to establish a multi-party state headed by a constitutional monarch. In another part of the region are Pakistan and Bangladesh, which grew out of a bloody partition, followed by a civil war. In both these countries authoritarian military regimes have been replaced by democratically constituted governments. At the centre of the region is India, a federal polity with a long tradition of representative institutions grounded on a strong industrial and technological base. Lastly,

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there is Sri Lanka, an Island Republic besieged by an insurgency, escalating violence and the militarization of civil society.

The problems of maintaining political stability and institution building are further compounded by massive economic and demographic pressures. The region accounts for a mere 2 per cent of the global income but needs to support 22% of the global population. Almost half the population of the region is believed to live below the poverty line, without basic needs. Further, the region has a population increase of 25 million per year, which is five times the population increase of OECD countries. Despite this diversity and complexity, it remains a region which has the largest population committed to periodic elections, representative institutions, fundamental rights and democratic freedoms. It is, therefore, a region of considerable importance in terms of constitutional experimentation, institutional re-appraisal and renewal. Issues of constitutionalism, human rights and democracy are at the centre of the political and intellectual agenda. Nepal has recently enacted a new constitution based on popular sovereignty, a multi-party state, and enforceable fundamental rights. Bangladesh was engaged in a debate on the form of government - parliamentary or presidential - which they have now resolved in favour of the former. In India the secular foundations of the state and the federal characters of the polity have been challenged by revivalist and secessionist movements. Pakistan is also struggling to reconcile the contradictions of a constitutional framework which sought to graft a Westminster style government on to a highly centralized Presidential system, while Sri Lanka is seeking to reconstruct its Bill of Rights in response to persistent complaints of gross and persistent abuse of the human rights of minorities and political dissidents.

II.

Paul Sieghart, the renowned human rights scholar and activist, has stated that one of the most cynical propositions in politics is that "you cannot make omelettes without breaking eggs". In the field of economic development, it has meant that you cannot create the benefits of growth, without violating at least temporarily the human rights of a substantial number of citizens. This thesis has led to many in South-East Asia arguing that human rights and democracy must be subordinated to the imperatives of development. The newly industrialised countries - which are sometimes described as the four dragons - are cited as inspiring examples of this proposition. But of these countries, two, Singapore and Hong Kong, are small city-states, and it would be difficult to draw broad generalisations from their very particular experiences. This model became further discredited with the collapse of the Marcos regime, and of the military governments in Bangladesh and Pakistan as it became clear that the proposition was no more than a justification for authoritarianism and for the naked abuse of political power. It was one of the singular achievements of this development decade that it is now widely advocated that upholding human rights is integral to development. This means that respect for individual human rights promotes and does not hinder economic development. This view of the interdependence of human rights and development is embodied in the UN Declaration on the Right to Development which was adopted by the General Assembly on 4th December 1986. The core conceptions which inform this Declaration include: 1) recognition that the human person is the central subject of development and should be the active participant and beneficiary of the right to development, 2) acknowledgement that all human rights (civil, political as well as economic, social and cultural rights) are indivisible and interdependent and call for equal attention, and 3) the

realisation that the failure to observe civil and political rights, as well as economic, social and cultural rights constitute obstacles to development.

One of the more important innovations of the UN Declaration is the provision mandating states to remove 'obstacles' to development arising from the failure to respect rights and freedoms. This means that the state itself will need to (a) observe and respect the rights and freedoms as embodied in the international human rights covenants and related instruments, and (b) address the need to reform state structures, institutions and policies which are an obstacle to the realisation of these rights. Upendra Baxi has pointed out that obstacles to development can also arise from civil society. The humanity of tribal groups, minorities and disadvantaged social groups is often violated by institutions and practices which operate in civil society. The violators of rights in these cases are not merely the agents of state power but the holders of social status and of economic power. Baxi adds: "The idea of obstacles to rights, and the summons for their removal, is fascinating in compelling our attention to the hydra-headed monster of human rights violators who reside not just in states but in human collectivities inscribed in the very order that constitutes society".

There are, however, disturbing trends in the opposing direction which again seem to question the indivisibility of human rights and development. The Sixth SAARC Summit, held on the 21st of December 1991, argued that human rights issues should not be viewed in narrow and exclusive political terms. The Declaration further sought to draw a dichotomy between 'human rights' and 'development', and added that realisation and enjoyment of human rights of all persons is through "the pursuit of development for all citizens in conditions of stability". Human rights groups view this as a very defensive statement, which seems to imply that 'development' needs to precede the full realisation of human rights.

III.

In exploring this relationship between development and human rights, it has been increasingly argued that the developmental models that are being adopted, particularly in South Asia, are incompatible with the realisation of human rights and of social justice. These models are being vigorously advocated by multilateral financial institutions like the World Bank and the International Monetary Fund and by several members of the donor community. They involve the adoption of policies which are intended to favour private sector development and the commercialisation and/or privatisation of state enterprises. An economic model, with its primary emphasis on the market, involves legislative and other policy measures directed towards the dismantling of state controls, the liberalisation of foreign exchange, the promotion of foreign investment and capital market development. Critics of this developmental model point out that these policies are likely to increase inequality and regional disparity. They have further resulted in the reduction of social welfare measures intended to benefit the urban and the rural poor and have contributed to dislocation, and insecurity within the workforce. In an attempt to contain wage demands in industrial estates and free trade zones, trade union rights are restricted and unionization is often discouraged. It is further argued that the advocacy of this economic model results in the centralisation of decision-making and an increase in the authoritarian character of the state. It further results in the progressive exclusion of non-governmental organisations and people's movements from critical decision-making on investment projects, large scale agro-industrial or dam projects which could have an impact on the rights of minorities and of indigenous people. The traditional coalition of

social forces consisting of trade unions, peasant organisations, and developmental groups are less capable of resisting developmental projects which have an adverse environmental or human rights impact because of their inability to consistently articulate an alternative developmental vision. These developments therefore are viewed with great alarm as having an impact not merely on the social and economic rights of disadvantaged groups, but also in compromising the right to associate and the right to participate effectively in political and economic decision-making.

Central to any process of development is the elimination of poverty. Poverty is associated with widespread denial of human rights as the poor are powerless and are unable to organise and defend themselves. Human rights groups therefore remain convinced that the developmental models that many South Asian countries consider inevitable, and involving structural adjustment policies, would result in the further impoverishment and marginalisation of the poor, and of disadvantaged groups.

IV.

A question which has become central to the relationship between human rights and development is the issue of political conditionalities. This means that the continuance of developmental assistance would be dependent on the observance of political conditions such as 'good governance' and the observance of civil and political rights.

The European Council of Ministers for Development Cooperation in its Resolution of 28th November 1991 on Human Rights, Democracy and Development emphasised that respect for human rights, the rule of law and the existence of political institutions which are effective, accountable and enjoy democratic legitimacy, are the basis for equitable development. In this regard, it reaffirmed that safeguarding human rights is an essential part in the relations between the Community, its member states and other countries. The Resolution further pointed out that in the event of grave and persistent human rights violations or the serious interruption of democratic processes, Community and member states will consider appropriate responses. Such responses will include confidential or public 'demarches', as well as changes in the content or channels of cooperation or, when necessary, the suspension of cooperation. In addition to human rights, the Council Resolution attaches importance to the issue of 'good governance'. This has been defined to include democratic decision-making, adequate government transparency and financial accountability, respect for the rule of law and freedom of the press and of expression. The EC Development Council Resolution also attached importance to the question of military spending and emphasised that excessive military expenditure not only results in the diversion of funds from developmental purposes, but is often used for the purposes of internal repression and denial of human rights. In Canada the House of Commons Standing Committee on External Affairs and International Trade recommended in May 1987 that progress on human rights should be a central element of developmental assistance. It however recommended that where gross human rights violations prompt interruption of government to government assistance, alternative ways should be sought to channel such assistance to civil society. It further argued that emergency humanitarian assistance should never be denied.

Developing countries, by and large, have resisted the link between human rights and aid on the ground that such conditions infringe on their national sovereignty. They see these intercessions in political terms as efforts to appropriate human rights as an instrument in the political and ideological hegemony of the North over the South. They see attitudes of moral condescension and cultural superiority implicit in many of the pronouncements on the human rights situations in the countries of the South. Human rights groups on the other hand, have welcomed such initiatives as they believe that they are likely to result in improved compliance with international human rights standards. They also argue that there are no issues of national sovereignty which should serve as a barrier to international concern on human rights and humanitarian issues. They further argue that developing countries, by becoming a signatory to international human rights instruments, voluntarily accept international scrutiny of their domestic human rights records.

Bertram Ramcharan argued in 1990 that sovereignty is abused when it seeks to shield gross violation of human rights or grievous human suffering. Sri Lanka's Civil Rights Movement issued a statement in 1991 that "it is accepted law today that the doctrine of sovereignty of states no longer holds good so far as the state treats the fundamental rights of its subjects. The concept of national sovereignty has in this respect given way to the concept of international responsibility".

But this question of the link between human rights and development threatens to further polarise the international community along North-South lines.

In East Timor in November 1991, Indonesian soldiers fired at a funeral procession, killing and injuring dozens of civilians. The Dutch Government suspended developmental assistance to Indonesia. In response to international protest against the incident, Indonesia appointed an inquiry tribunal. In consequence of its report, the Government expressed regret and suspended two senior military officials who were in charge of the soldiers. Many observers mistakenly interpreted the Indonesian response as an acknowledgement of the legitimacy of international human rights concerns. However, within a few weeks the Indonesian Government terminated its aid relationship with the Netherlands which had been one of the more severe critics of the East Timor incident. There was similar retaliatory action by Kenya when it severed diplomatic relations with Norway in response to Norwegian criticism of Kenya's treatment of political dissidents. China and India have opposed any attempt to link human rights to aid, trade or multilateral assistance.

If the donor community is to be effective in maintaining this policy, there is a need for both credibility and consistency. Credibility is related to the ability of the North to ensure that the 'South' within its national borders, guarantees that groups such as refugees, migrant workers and its own under-class, are not subject to discriminatory and arbitrary treatment. There can be no such credibility if there is conspicuous disparity between domestic practices and international policies on human rights questions. The issue of consistency arises when there is selectivity with regard to the countries who are subject to punitive measures. Is the decision to suspend or terminate developmental assistance based solely on human rights considerations or is it more probable that factors such as geo-political importance, the economic model pursued by the recipient country and the domestic politics of the donor country are likely to influence such decisions?

V.

The whole question of political conditionalities has also resulted in criticism that developed countries are seeking to impose western values and institutions on non-western societies under the guise of promoting good governance and human rights. The result is that the universal character of human rights is now being challenged by many nations in the South. Aung San Suu Kyi recently argued that it is a puzzlement to the Burmese why concepts which recognise "inherent dignity, equal and inalienable rights of human beings, and which accept that all men are endowed with reason and conscience, and which recommend the universal spirit of brotherhood can be inimical to indigenous values.... It is also difficult for them to understand how any of the rights contained in the 30 articles of the Universal Declaration of Human Rights can be seen as anything but wholesome and good. If ideas and beliefs are to be denied validity outside the geographical and cultural bounds of their origins, Buddhism would be confined to North India, Christianity to a narrow tract in the Middle East and Islam to Arabia". While cultural relativism cannot serve as a basis for diluting or derogating from universal human rights standards and obligations, we also need to recognise that the discourse on human rights takes place in an esoteric language and idiom, which is unintelligible to vast sections of the polity. A conspicuous failure of the human rights movement has been its inability to expand the base of support for secular, democratic and pluralistic values. The social imagination of an entire generation is being captured by the ideologies of ethno-populism, of exclusion, and of intolerance.

Therefore the discourse on human rights and development needs to be enriched by explicit reference to the religious and cultural traditions of South Asia. The rhetoric on basic rights and freedoms is based on statist and individualistic conceptions. The base of support for fundamental rights can be expanded if it is linked to belief systems which have given content and meaning to the social and religious experiences of the people within South Asia. These indigenous, cultural and religious traditions emphasise communitarian conceptions of justice, and conciliatory and consensual approaches to the resolution of conflict.

Obligations of reciprocity within a family facilitate attitudes and values supportive of the rights of the child and the needs of the elderly. Such an approach leads to more effective protection of social rights than what could be available in a legal culture, which views these issues exclusively in terms of an individual's claim against the state.

There are other ideas such as 'dharma' which are central to the Hindu-Buddhist theory of justice and define the moral limits which rulers may not transgress if they are to command the allegiance of their subjects. Very little effort has been made to imaginatively build on such concepts to articulate principles of governance and democratic accountability which draw on the language and idioms which form part of the Hindu-Buddhist tradition. Similar attempts need to be made to draw the linkages between constitutional values and the rhetoric of rights on the one hand, and the concepts, ideas and institutions which are central to the belief systems and the world view of Islam, on the other.

This point is perhaps illustrated by the recent intercession of the Thai monarch in the constitutional confrontation between pro-democracy forces and the military. It is significant that most comparative constitutional lawyers have commented on the transient and evanescent nature of Thai constitutions. Between June 27, 1932 and January 29, 1959, Thailand had as

many as seven constitutions, of which two were described as provisional (1932, 1947), and one as interim (1950). One scholar described this process as the practice of factional constitutionalism, which is the "process of drafting a new constitution to match and protect each major shift in factional dominance". But the more perceptive observation is that Thailand had 'two constitutions, the written constitution which is ephemeral, and the more enduring substantial structure of law and custom which have remained as the fountain upon which government rests'. Tambiah points to the Theravada doctrine of Kingship (the king as *Boddhisatva* - the cosmic liberator - and as *Chakkravarti* - the terrestrial emperor) as being resilient throughout Thai history, and legitimating changing forms of state power.

Tambiah refers to a remarkable myth which leads to the assimilation of Manu's *Dharmasatra* and indigenous customs in the Theravada Buddhist countries of Burma and Thailand. This process of reincorporation required the creation of a new Manu to legitimise his code. The myth described him as a cow herd who, because of his flair for adjudicating disputes, was made the King's minister, while he was a child. Dissatisfied with one of the decisions involving the ownership of cucumber, he decided to retreat, practise meditation and to endure severe austerities. Eventually, he ascended to heaven, where he found the "*dhammathat* laws engraved on the boundary wall of the solar system". He brought these laws back to the King, who is reconstructed as 'the embryo Buddha and an embodiment of justice'. In the Thai tradition of kingship, this leads directly to the 'amalgamation of *rajastham*' (the individual acts and applications of law by the king) with *dhammastham* (absolute moral law).

[Madam Chairperson, you have reiterated that one of the aims of the meeting would be to identify the challenges and threats confronting human rights at the end of the twentieth century.

In the past few years in South Asia we have witnessed momentous changes which have been beyond our most optimistic expectations. These were moments of triumph in the struggle for democracy and human rights. These moments have given rise to intense faith and optimism in the normative power of constitutions to create multiparty systems, establish competitive electoral processes, catalyse civil society institutions, and guarantee justiciable human rights. On the other hand we also had our moments of tragedy, of anguish and of despair. One such tragedy relates to recent incidents in Ayodhya, and the consequent violence, bigotry and intolerance which have beleaguered the Sub-Continent. Neither the discourse on human rights nor on development have been adequately responsive to the forces of ethnicity and of nationalism which place in jeopardy the integrity of the nation state and the foundations of a secular-democratic polity. Such development leads to disillusionment and cynicism towards the appalling disparity between constitutional ideals and the reality of gross and persistent violations of human rights.]

In the struggle for human values, it is immoral to submit to despair, to cynicism. It was Aung San Suu Kyi who reminded us that in the struggle for development and human rights it should be our common endeavour to prove that "the spirit of man can transcend the flaws of human nature".

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DEMOCRACY, DEVELOPMENT AND HUMAN RIGHTS

Madeleine Ramaholimihaso*

These three concepts are on everyone's lips: they are the banner that is being upheld throughout the world.

The remarks that follow are bound to be specific, as they are based on a particular national context, that of Madagascar. Although the situation in the Malagasy Republic has something in common with that in sub-Saharan Africa, I can not claim to describe what is happening on the neighbouring continent, still less in the rest of the world.

I. HUMAN RIGHTS

We talk of various kinds of human rights: economic, social, cultural, civil and political rights. Curiously, religious rights are not included in the explanatory memorandum that I received for the purpose of preparing my speech, but I shall not dwell on this omission. We talk of the different human rights as though they really existed, or as though their establishment was only a matter of time. But suppose these rights do not exist?

The organisers of this meeting saw fit to begin the proceedings with the theme "Implementation of human rights, including the prevention of human rights violations". They have probably come to the same conclusion as me. Even though these three concepts interact, it seems to me that, generally speaking, democracy cannot progress nor development really take off as long as human rights are neglected.

In practice, in a country like Madagascar (and the same is no doubt true of many countries throughout the world), human rights mean nothing to the large majority of the population. Human rights are perhaps an ideal, but no one is in a position to say how and when they will become a reality. Malagasy man is not a person recognised by law as being able to assert his rights.

Can one talk of economic rights when there is massive real or hidden unemployment, when the minimum wage (for the minority entitled to it) allows one to live for one week in four and when social legislation is virtually ignored?

How can you expect people to feel they contribute to the economy when they consider themselves wronged by the authorities or those claiming to represent the State? For instance, State control, centralised collection of agricultural produce and the fact that service roads are non-existent have encouraged civil servants to seize agricultural revenue and make the peasants who produce food hostile to any kind of State intervention. The peasants have

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been driven to defend themselves and withdraw into a shell in order to survive, and this has fostered an atavistic distrust of any form of power. That is why Madagascar has to import rice (which suits the ruling classes), whereas it could be amply self-sufficient in this cereal.

How can we talk of social rights when there is a housing shortage, and the housing that exists is dilapidated, when health care is non-existent, when justice has to be bought and when insecurity is rife in town and country alike?

How can we talk of cultural rights when education at all levels is diminishing in both quantitative and qualitative terms? The totalitarian tendencies of the Marxist-oriented ideology, which created the "new man", have uprooted and depersonalised Madagascan men and women, young Madagascans and Madagascan children, who now have no past and no future. In the circumstances, the attraction of sects and other movements which stir up urban riots and make rural uprisings commonplace is hardly surprising.

For the destruction of society has, at the same time, destroyed traditional solidarity and perverted cultural values. Thus the "fihavanana" which all Madagascans claim to uphold and could be described as being the existence of harmonious social relations based on the model of blood relationships and observance of the rules of nature, designed to establish and consolidate harmony within the group, has been taken over by the ruling class.

In fact, human rights - and it is impossible to imagine a political speech that does not refer to them - do exist in Madagascar, as they no doubt do in the rest of Africa. But they are the prerogative of a tiny minority, which has no corresponding duties in return. This minority, at the same time, prevents the rest of the population from having access to these rights. I am talking of what is commonly referred to as the "ruling class", ie the political circles and big business, whose interests are often identical and whose members are frequently related.

The ruling class takes full advantage of all the human rights, be they economic, social, cultural, political or civil, but it does nothing to open up access to others. It has a conception of the economy which includes making money by doing nothing. This means that the ruling class does not have to produce items or worry about increasing production, but simply collects levies on everything that others produce. Moreover, these levies are not proportional to output, but appear to be fixed in absolute terms, which means that they constitute an increasingly heavy burden as production falls. In the circumstances, it is hardly surprising that the standard of living of the ruling classes, the very limited scope of its concerns and its intellectual and cultural traditions make it alien and, in any event, inaccessible to the bulk of the population, who are relegated to what people insist on calling a "marginal" position. In fact, the population is made up largely of rural dwellers and the urban proletariat, while the real "marginals" are none other than the minority ruling class.

II. AT THE CROSSROADS

It is within this social context that "democratic progress" in Madagascar and Africa is taking place. Real changes are occurring, and further changes will follow. A convention signed on 31 October 1991 by the representatives of the various political factions, after our

large island in the south-west of the Indian Ocean had experienced months of impressive peaceful demonstrations, introduced a provisional transition period of eighteen months before the proclamation of a third republic.

Later regional fora, a national forum (attended by representatives of the political groupings and others claiming to be independent of the political parties) proposed a draft constitution. The text was submitted to various bodies before being adopted by referendum. The fundamental law provides for the election of the President of the Republic by universal suffrage, followed by a general election.

We do not go agree with those who consider democracy simply a system of government, with a series of techniques copied from contemporary western models. To us, democracy is an ethic for life in society, whereby everyone participates consciously and voluntarily in a common project; where everyone has the right to exist, including the minority which has not adopted the project. This implies respect for the dignity of all, freedom of expression, freedom of initiative and the right to the legitimate enjoyment of the results of his or her labours.

In as much as the transition period was introduced to pave the way for a new system, replacing an authoritarian system of government which wielded uncontrolled power and led to the collapse of the previous regime (and indeed, one could say, the previous regimes), there are some who consider that foreign countries are fully to blame for the failures.

But our ruling class and those considered the elite in our countries, have always maintained relationships with foreign decision-makers. After serving as the conveyor belt for imposing the colonial system on the population during the period of colonisation and the first republic, which can be described as "neo-colonial", the ruling class, at the time of the second republic, manipulated these foreign contacts for its own benefit and to the detriment of the rest of the population. Today foreigners no longer force themselves upon us; they are actually sought after.

When one thinks of the extent to which the education received by national government officials - an education whereby conformity with the orthodox Western thought of the time allowed o to be considered a valid interlocutor, and enabled nationals to shirk their responsibilities even more easily because they were encouraged to do so from abroad -it is difficult to decide who is responsible. In any event, responsibility is shared.

Basically, the ruling class of the transition period has come from the same social class as those of previous regimes, if not the same families - indeed, in many cases, the people themselves are the same. Will they be capable of changing their approach? If not - which is unfortunately only too likely - will they accept the emergence of a new political class? Whether the African countries and Madagascar are rebuilt or decline as the 21st century dawns will depend on the answer to this question.

So far, every change of regime has provided the ruling class with an opportunity to step up the accumulation of profits on the pretext of efficiency. It is often possible to divert development aid, exploit mineral and forestry resources in a more or less uncontrolled fashion and clandestinely export the country's cattle with the consent, whether readily obtained or not.

of those in power. Through incorrect information, foreign countries are portrayed as imposing measures harmful to the nation. Yet these measures, although harmful to the majority, are, as though by coincidence, advantageous to a few. Actions considered reprehensible are not penalised in any way when perpetrated by the ruling class, but are severely punished when carried out by ordinary people.

Moreover, the ruling class is rarely held accountable. Because the Convention of 31 October 1991 is a mishmash, the responsibilities of the various institutions of the transition period are ill-defined. The President of the Republic and the Supreme Authority of the State and Government blame each other for the political deadlock and scandalous economic and financial practices, but the public is not entitled to sufficient information to form an opinion. Some of the decision-makers say they have taken cases to court, but that they have not been investigated. The separation of powers was far from a reality under the second republic, and does not seem to be becoming any more tangible under the transition regime. This leaves ample scope for abuse by anyone who wields authority.

On the pretext of technical requirements, efficiency, or the deadlines laid down by financial backers, the State representatives take decisions as they see fit and take virtually no account of the people they administer. I shall quote only two examples of this: public contracts and privatisation.

Why, during the transition to the third republic, when the main aim is to deal with day-to-day business, was the procedure governing public contracts suspended, and indeed suspended on a long-term basis? The resulting arbitrary action has elicited numerous protests and even given rise to complaints to the courts, but no action has been taken on them to date.

Part of the "medicine" prescribed by the World Bank and the International Monetary Fund was the privatisation of firms in which the State has a majority holding. But as the now well-known specialist in political sociology Jean-François Bayart pointed out, in Madagascar, as in other African countries, and I quote, "it is not so much the economy that is State-controlled as the State which is privatised". It is not possible to tell whether decisions taken either in the management of State-owned companies or, subsequently, in privatisation operations (in which both employers' organisations and trade unions have criticised the lack of openness and indeed the impenetrableness) are based on the interests of the community or on those of particular individuals or groups. In the absence of clear procedures and accountability on the part of those in charge, demands for explanations and complaints are met with blunt rejection or disdainful silence. It is hardly surprising that those who talk of the "ethic of results" are either uttering empty words or, if they are talking seriously, considered as trouble-makers, to be consigned to the ranks of "right-thinking" people.

To allow such doings to go on means allowing influence-peddling to gain ground, and letting politics destroy the democratic momentum that has thrown up the prospect of a new system that will benefit the people.

For the time being, the indivisibility and interdependence of human rights merely favours the status quo. The only hope is that the democratic embellishment that has been observed, mainly in the form of mass demonstrations by inhabitants of towns who have had enough, and elections in which the issues are not always clear and often involve irregularities.

will make the population constantly critical of any form of political power and eventually force those in power to tackle the issues of rights for all categories of the population.

III. HUMAN RIGHTS, DEMOCRACY AND DEVELOPMENT

The structural adjustment programmes imposed on our countries are designed to establish conditions that will bring about a revival of the economy. We do not know whether they will make it possible to wipe out poverty, but what we have observed so far is that they are in the process of wiping out the poor, whose situation has become drastic as a result of the deterioration of such basic services as the health and education systems. The prerequisites for survival, compounded by ignorance, are prompting the poorest to destroy their environment themselves: vegetation is burned to provide grazing land, there is deforestation, and so on. What kind of case can one make for the rights of future generations?

These structural adjustment programmes were made necessary by the excessive indebtedness into which the powerful minority dragged the country, without the knowledge of the population, but in collusion with financial backers in order to invest in ill-considered and often over-ambitious projects, which mostly proved fruitless. It is not the decision-makers, but the poorest sections of the population, who suffer from these measures.

Truly democratic management and supervision are the only way of producing action plans that meet the needs of this population, to be implemented by structures closer to the grass roots. The backers recommend setting up separate decision-making, implementing and evaluation procedures, involving all the sections of society concerned at all stages of the project, from its design to the evaluation of the measures taken. How can these instructions be made effective?

Speech-makers repeat that new emphasis should be placed on private initiative, be it commercial (ie by firms) or humanitarian (by non-governmental organisations). Indeed, it can be observed that humanitarian aid schemes are increasingly often designed to enable the beneficiaries to promote the schemes themselves, and that local NGOs seem to find increasing favour with international (bilateral or multilateral) financial backers.

This craze for the NGOs, the country's strong forces called on to become actors in the development process in the full sense of the term, puts them in a difficult and risky position. If the sponsors do not give them the wherewithal to live up to the hopes they place in them, bitter disappointment will ensue. It is therefore necessary, at least in the cases of those that have already demonstrated their abilities to mobilise local as well as foreign energy and resources, to strengthen the NGOs' internal structure and activities by giving them the means to undertake wider and more professional operations.

This would make it possible to really capitalise on experience and more effectively pass on local expertise and skills. In this way, local development will take shape, which today appears to be a necessity. But this will only be truly meaningful if we can avoid the deviations that have occurred in this field in countries that nonetheless have a longer standing democratic tradition than our own.

That is to say that civic education must be carried out relentlessly if real democratic progress is to be achieved.

In spite of its imperfections, some of which were either predictable or inevitable, the referendum of 19 August 1992 and the first round of the presidential election of 25 November 1992 can be considered as a step forward for the people of Madagascar on their long road towards democracy. The population voted with a sense of calm and responsibility that impressed the international observers present in the country. This responsible social behaviour and maturity might however be weakened through the incompetence of certain authorities or coercion by political agitators, agitators of ethnic and tribal clashes.

Without denying the justifiable reservations about the value of elections in a country such as Madagascar (and that is where our position may differ from that of the international observers, who are, on the one hand are simply stopping by, and on the other, may be unable to appreciate many aspects of a cultural nature), we nevertheless think that elections today represent a necessary stage if progress is to be made in the democratic process. However, they must include a minimum of honesty.

The dynamic of observing elections, more specifically by nationals, instituted at the beginning of 1989 by the National Committee for the Observations of Elections and Civic Education (Comité National d'Observation des Elections et d'Education des Citoyens), known by its abbreviation CNOE, appears to us to be one way, but not the only way, of propelling the population from being subjects resigned to fear, untruthful speeches, abuses of power to being citizens aware of their rights and duties.

When the citizens achieve this awareness, we will have responsible leaders, who are no longer concerned solely with their own interests, but with the common good.

In the winds of freedom that are blowing today, it is not easy to understand that democracy is learned gradually and that what the opposition to authoritarian rule is doing is not necessarily all good. We must try to remain clearheaded at all times. Earlier we were discussing the necessity for a more just division of the social costs of structural adjustment programmes, which have been augmented by programmes known as "programmes to compensate for the negative effects of the first", as well as programmes that have been baptised by the United Nations system as the "social dimension of structural adjustment".

If democracy cannot be the concern of people who do not know if they are going to be able to eat that day and still less the next, it is then ultimately not possible to penalise excessively economic initiative to such an extent that it is prevented from creating jobs.

It is therefore up to the State to organise debates on the choices to be made, and ultimately to arbitrate. That will only be possible if the population sees itself reflected in the representatives of the State, and if these representatives consider it normal that they are accountable to the population. In this respect, the opportunities for changing those in power by democratic means limit the dangers of arbitrary rule and corruption and consequently of mafia-like predatory practices.

It has often been said that financial backers played a vital role in the democratisation

that is under way in Africa. Doubtless in certain conditions that were linked to the granting of funds (such as press freedom or political pluralism) they allowed latent discontent to crystallise and opposition to be expressed. But we have already seen that the new powers, the products of transition regimes, bear an uncanny resemblance to their predecessors.

At a colloquy on "Youth, Towns, Employment", which I attended in Paris last October, the French described their confusion in that, as they said, if France does something, it is reproached and if it does nothing, it is also reproached. The Africans replied "it is this ambiguous 'absence-presence' that we reproach your government for."

It is the fact that the sponsors give the curious impression of being content with superficial reforms, whilst they do not appear to want to help the former leaders remain in power. Is the aim of development aid, or at least one of its objectives, the promotion of human rights? Or will it be satisfied with democratic alibis, designed to cover up practices that are fairly disreputable, motivated by power struggles between industrialised powers.

In our opinion, the most serious contribution to the emergence of Malagasy and African democracy could come from what is generally termed "civil society". It is vital that popular participation forms an element of the solution given the increasingly complex problems of our country.

The relaxing of state control, following the abolition of ideological and political monopolies, as well as attempts at economic privatisation has created a climate that is favourable to initiatives by citizens, who have organised various associations, possibly economic or social in nature, or for civic education or raising political awareness.

Now, all too often these initiatives come up against the inertia, to say the least, of state and administrative bodies, which are still reluctant to cede the slightest bit of the power they have assumed.

That is the crux of the problem. It is not a question of abolishing or weakening the state, but of ensuring that it performs its allotted tasks well, namely the maintenance of infrastructures, clearly defined basic services and the security of people and property.

But so long as the State and its representatives tighten their grips on their prerogatives and privileges, democracy, development and human rights will remain empty words. If, on the other hand, states are capable of relinquishing their hold and allowing members of civil society to express themselves and act, then change could become a reality.

Then we might see the beginnings of what the M'aar Episcopal Conference, in a letter on development written twenty years ago, regarded as the first hope for the people of Madagascar, the "AINA", the life, the vital flow, the human being animated by this vital flow.

Living is not only not dying. The letter said: "It is certainly good fortune to exist, the possibility of fulfilling oneself both among the living and among our ancestors and their descendants. It is a vital need for participation which prompts people to join together for common action. Justice naturally forms a part of the Malagasy view of life. Without it society would no longer be human."

Since the Episcopal Catholic Conference, the Christian Council of Churches has repeatedly denounced the exercise of personal power for the exclusive benefit of a minority, whilst one in two Malagasy lives below the absolute poverty line.

Will these changes that are emerging allow a real mobilisation of the population? It presupposes information for everyone, an openness, making people aware of the stakes of the changes that are at hand. It presupposes learning to use dialogue, listening to each other which could lead to a complete calling into question of what we have done, and attending to the needs of all groups in society. It is at this price, this price alone that Madagascar will find the ways and the means of truly deserving the name that it has long held - the happy island! The happy island because it is at peace with itself.

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